

4-29-2015

# Charboneau v. State Clerk's Record v. 1 Dckt. 43015

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                               |   |                                |
|-------------------------------|---|--------------------------------|
| Jaimi Dean Charboneau,        | ) |                                |
|                               | ) | SUPREME COURT NO. 43015        |
| Petitioner,                   | ) | DISTRICT COURT NO. CV-2011-638 |
|                               | ) |                                |
| vs.                           | ) |                                |
|                               | ) |                                |
| STATE OF IDAHO,               | ) |                                |
|                               | ) |                                |
| <u>Respondent / Appellant</u> | ) |                                |

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District  
of the State of Idaho, in and for the County of Jerome

HONORABLE ROBERT ELGEE  
District Judge

LAWRENCE WASDEN  
Attorney General  
Statehouse Mail Room 210  
P.O. Box 83720  
Boise, Idaho 83720-0010

BRIAN M. TANNER  
137 Gooding Street West  
Twin Falls, Idaho 83301

JOHN C. LYNN  
6861 Glenwood Street  
Boise, Idaho 83714

ATTORNEY FOR RESPONDENT / APPELLANT

ATTORNEY(S) FOR PETITIONER



Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date       | Code | User   | Judge   |
|------------|------|--------|---|
| 6/15/2011  | NEWC | TRACI  | New Case Filed  |
|            |      | TRACI  | Filing: H10 - Post-conviction act proceedings<br>Paid by: Charboneau #22091, Jaimi Dean<br>(subject) Receipt number: 1105783 Dated:<br>6/15/2011 Amount: \$.00 (Cash) For: Charboneau<br>#22091, Jaimi Dean (subject) |
|            | PETN | TRACI  | Petition and affidavit for post conviction relief and<br>request that the court take judicial notice of the<br>record. Petitioner reserves the right to amend this<br>petition.                                       |
|            | AFFD | TRACI  | Affidavit of facts in support of post-conviction<br>petition.   |
|            | MOTN | TRACI  | Motion and affidavit in support for appointment of<br>counsel.  |
|            | ORDR | TRACI  | Order of disqualification.  |
|            | ORDR | TRACI  | Order of assignment.  |
|            | CHJG | TRACI  | Change Assigned Judge   |
| 6/22/2011  | ORDR | TRACI  | Order granting motion for appointment of counsel.   |
| 7/1/2011   | NOTA | TRACI  | Notification of Appointment   |
|            | NOTC | TRACI  | Notice of court's intent to dismiss pursuant to IC<br>19-4906   |
| 7/13/2011  | MOTN | SHELLY | Motion to Extend Time to Respond to Court's<br>Intent to Dismiss Pursuant to I.C. §19-4906  |
|            | MISC | SHELLY | Copy of motion and order mailed to Elgee  |
| 7/14/2011  | MISC | SHELLY | Affirmation of Power of Attorney (copy faxed to<br>Elgee)   |
| 7/21/2011  | ORDR | KAREN  | Order to Extend Time to Respond to Court's<br>Intent to Dismiss Pursuant to I.C. 19-4906  |
| 7/22/2011  | MOTN | KAREN  | Motion to Allow Petitioner Access to Property for<br>the Purpose of Obtaining Evidence (faxed to<br>Elgee, along w/proposed Order)  |
| 9/8/2011   | PETN | TRACI  | verified petition to enter and inspect real property  |
|            | MOTN | TRACI  | 2nd Motion to extend time to respond to court's<br>intent to dismiss pursuant to IC19-5906.   |
| 10/25/2011 | MOTN | TRACI  | Motion to request a ruling on the petitioner's<br>motion to allow petitioner access to property for<br>the purpose of obtaining evidence and verified<br>petition to enter and inspect real property.                 |
|            | MOTN | TRACI  | Motion to appoint a writing sample expert at<br>county expense.   |
|            | AFFD | TRACI  | Affidavit of Frederick R Bennett  |
|            | AFFD | TRACI  | Affidavit of Brian M Tanner   |
|            | MISC | TRACI  | Amended petition for post-conviction relief.  |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date       | Code | User   |  | Judge        |
|------------|------|--------|--|--------------|
| 10/25/2011 | RESP | TRACI  | Response to notice of court's intent to dismiss pursuant to IC 19-4906 and request for evidentiary hearing.    | Robert Elgee |
| 10/31/2011 | NOTH | SHELLY | Notice Of Hearing- copy to Elgee   | Robert Elgee |
|            | HRSC | SHELLY | Hearing Scheduled (Motion 12/16/2011 02:30 PM) Various Motions   | Robert Elgee |
| 12/7/2011  | AFFD | TRACI  | Affidavit of Jaime Dean Charboneau   | Robert Elgee |
|            | MISC | TRACI  | supplemental response to court's intent to dismiss pursuant to IC 19-4906 and request for evidentiary hearing. | Robert Elgee |
| 12/8/2011  | ORDR | TRACI  | procedural order   | Robert Elgee |
|            | HRVC | TRACI  | Hearing result for Motion scheduled on 12/16/2011 02:30 PM: Hearing Vacated Various Motions--per court         | Robert Elgee |
| 12/14/2011 | HRSC | TRACI  | Hearing Scheduled (Hearing Scheduled 12/16/2011 02:30 PM) in chambers  | Robert Elgee |
|            |      | TRACI  | Notice Of Hearing  | Robert Elgee |
| 12/15/2011 | MOTN | TRACI  | Motion requesting issuance of court subpoena--DENIED   | Robert Elgee |
|            | MOTN | TRACI  | Motion requesting issuance of court subpoena--DENIED   | Robert Elgee |
|            | AFFD | TRACI  | Affidavit of Fredrick R Bennett.--NOT NOTORIZED  | Robert Elgee |
| 12/16/2011 | HRHD | TRACI  | Hearing result for Hearing Scheduled scheduled on 12/16/2011 02:30 PM: Hearing Held in chambers                | Robert Elgee |
| 12/19/2011 | HRSC | TRACI  | Hearing Scheduled (Scheduling Conference 01/27/2012 02:00 PM)  | Robert Elgee |
|            |      | TRACI  | Notice Of Hearing  | Robert Elgee |
| 12/27/2011 | ORDR | TRACI  | Order dismissing the court's intent to dismiss pursuant to IC 19-4906 (subject to any state motion to dismiss) | Robert Elgee |
| 1/3/2012   | MOTN | TRACI  | ex-parte Motion to appoint Tom Berry as special investigator at county expense                                 | Robert Elgee |
| 1/5/2012   | MOTN | TRACI  | Motion for summary disposition   | Robert Elgee |
|            | BREF | TRACI  | Brief in support of motion for summary disposition   | Robert Elgee |
| 1/6/2012   | OBJC | TRACI  | Objection to petitioner's request for appointment of investigator  | Robert Elgee |
| 1/25/2012  | ORDR | SHELLY | Order Appointing Tom Berry as Special Investigator at County Expense   | Robert Elgee |
| 1/26/2012  | MISC | SHELLY | Response to State's Motion for Summary Disposition - copy faxed to Elgee                                       | Robert Elgee |
|            | MOTN | SHELLY | Renewed Motion to Appoint a Writing Sample Expert at County Expense - copy faxed to Elgee                      | Robert Elgee |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User   | Judge  |
|-----------|------|--------|--|
| 1/26/2012 | MOTN | SHELLY | Motion to Release Original Court Documents Realted to First Degree Murder Case Against Jaime Charboneau - copy faxed to Elgee Robert Elgee   |
| 1/27/2012 | CMIN | SHELLY | Court Minutes<br>Hearing type: Scheduling Conference<br>Hearing date: 1/27/2012<br>Time: 2:00 pm<br>Courtroom:<br>Court reporter:<br>Minutes Clerk: Shelly Creek<br>Tape Number:<br>Brian Tanner<br>Mike Seib Robert Elgee                               |
|           | DCHH | SHELLY | Hearing result for Scheduling Conference scheduled on 01/27/2012 02:00 PM: District Court Hearing Held<br>Court Reporter: Sue Israel<br>Number of Transcript Pages for this hearing estimated: Robert Elgee  |
|           | HRSC | SHELLY | Hearing Scheduled (Motion to Dismiss 02/17/2012 02:00 PM) Robert Elgee   |
|           |      | SHELLY | Notice Of Hearing Robert Elgee   |
| 1/31/2012 | MOTN | TRACI  | Motion appointing Tom Berry as special invesigator at county expense.(under seal) Robert Elgee<br>Document sealed  |
| 2/2/2012  | MOTN | TRACI  | Motion to order jerome County Sheriff to supervise inspection of land. Robert Elgee  |
| 2/15/2012 | ORDR | TRACI  | Order allowing the petitioner to inspectk, review and obtain documents in the petitioner's first degree murder file. Robert Elgee  |
|           | ORDR | TRACI  | Orderdenying the peitioner's motion for court appointed handwriting expert Robert Elgee  |
| 2/17/2012 | CMIN | TRACI  | Court Minutes<br>Hearing type: Motion to Dismiss<br>Hearing date: 2/17/2012<br>Time: 2:39 pm<br>Courtroom:<br>Court reporter:<br>Minutes Clerk: Traci Brandebourg<br>Tape Number:<br>Party: Jaimi Charboneau #22091, Attorney: Brian Tanner Robert Elgee |
|           | DCHH | TRACI  | Hearing result for Motion to Dismiss scheduled on 02/17/2012 02:00 PM: District Court Hearing Held<br>Court Reporter: Candace Childers<br>Number of Transcript Pages for this hearing estimated: Robert Elgee  |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User   |  | Judge        |
|-----------|------|--------|--|--------------|
| 2/23/2012 | NOTC | TRACI  | Notice and agreement re purchase of audio recording of magistrate and /or district court proceedings.  | Robert Elgee |
| 3/1/2012  |      | TRACI  | Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Tom Bergstrom Receipt number: 1202002 Dated: 3/1/2012 Amount: \$12.00 (Money order) | Robert Elgee |
| 3/8/2012  | ORDR | TRACI  | Order granting the petitioner's motion for court appointed handwriting expert.   | Robert Elgee |
|           | ORDR | TRACI  | Second Order allowing the petitioner, to inspect, review and obtain documents related to the petitioner's first degree murder file.  | Robert Elgee |
|           | ORDR | TRACI  | Order denying the state's motion for summary dismissal.  | Robert Elgee |
| 3/9/2012  | MOTN | TRACI  | Motion for permission to appeal from an interlocutory order.   | Robert Elgee |
| 3/19/2012 | MOTN | TRACI  | Motion to return origianl hand written letter from Dewayne Shedd   | Robert Elgee |
| 3/20/2012 | NOTH | TRACI  | Notice Of Hearing  | Robert Elgee |
|           | HRSC | TRACI  | Hearing Scheduled (Motion 04/02/2012 10:30 AM) to be held by phone in Blaine Co  | Robert Elgee |
| 3/23/2012 | RESP | TRACI  | Response to State's request fro permission to appeal.  | Robert Elgee |
| 4/2/2012  | HRHD | TRACI  | Hearing result for Motion scheduled on 04/02/2012 10:30 AM: Hearing Held to be held by phone in Blaine Co  | Robert Elgee |
| 4/6/2012  | MISC | TRACI  | Court minutes from Blaine County.  | Robert Elgee |
|           | ORDR | TRACI  | Order to return to counsel for petitioner the original hand written note from Dewayne Shedd.   | Robert Elgee |
| 4/9/2012  | ORDR | TRACI  | Order denying motion for permission to appeal from an interlocutory order.   | Robert Elgee |
| 5/9/2012  | MISC | TRACI  | supplemental response to state's motion for permissive appeal  | Robert Elgee |
| 5/24/2012 | PETN | SHELLY | Petition for Appointment of Special Prosecutor   | Robert Elgee |
| 5/29/2012 | ORDR | TRACI  | Order for appointment of special prosecutor  | Robert Elgee |
| 7/10/2012 | MOTN | TRACI  | Motion to compel production of work privilege documents from the Idhao Atty General's Office.  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
| 8/10/2012 | MOTN | TRACI  | Motion to appoint co-counsel for pretitioner at county expense.  | Robert Elgee |
|           | APPL | TRACI  | Application of John C Lynn for appointment as co-counsel for petitioner  | Robert Elgee |
| 8/29/2012 | NOTH | TRACI  | Notice Of Hearing  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date       | Code | User   | Judge   |
|------------|------|--------|---|
| 8/29/2012  | HRSC | TRACI  | Hearing Scheduled (Motion 09/21/2012 02:00 PM) mtn to appt co counsel Robert Elgee  |
| 9/4/2012   | MISC | TRACI  | respondent's notice of non-objection to defendant's motion to appoint co-counsel Robert Elgee   |
| 9/12/2012  | STIP | TRACI  | Stipulation to in camera review of documents Robert Elgee   |
| 9/14/2012  | CONT | TRACI  | Continued (Motion 09/21/2012 11:30 AM) mtn to appt co counsel Robert Elgee  |
|            |      | TRACI  | Amended Notice Of Hearing Robert Elgee  |
| 9/19/2012  | ORDR | TRACI  | Order for in camera review of documents. Robert Elgee   |
| 9/21/2012  | CMIN | SHELLY | Court Minutes<br>Hearing type: Motion<br>Hearing date: 9/21/2012<br>Time: 11:30 am<br>Courtroom:<br>Court reporter: Sue Israel<br>Minutes Clerk: Shelly Creek<br>Tape Number:<br>Brian Tanner for the Petitioner<br>Mike Seib for the State of Idaho Robert Elgee |
|            | DCHH | SHELLY | Hearing result for Motion scheduled on 09/21/2012 11:30 AM: District Court Hearing Held Court Reporter: Sue Israel<br>Number of Transcript Pages for this hearing estimated: mtn to appt co counsel Robert Elgee  |
| 9/24/2012  | MISC | SHELLY | Motion Granted. Mr. Tanner to submit appropriate order Robert Elgee   |
|            | ORDR | SHELLY | Order to Appoint Co-Counsel for Petitioner at County Expense Robert Elgee   |
| 10/9/2012  | ANSW | TRACI  | State's answer to amended petition for post-conviction relief Robert Elgee  |
| 10/12/2012 | MOTN | TRACI  | ex-parte motion to allow petitioner to serve discovery requests upon the respondent and atty of record Robert Elgee   |
|            | NOSV | TRACI  | Notice Of Service Robert Elgee  |
| 10/18/2012 | OBJC | TRACI  | Objection to ex-parte motion to allow petitioner to serve discovery requests upon the respondent and atty of record Robert Elgee  |
| 10/22/2012 | MOTN | TRACI  | Motion to allow petitioner to serve discovery requests upon the respondent and atty of record Robert Elgee  |
| 10/29/2012 | MEMO | TRACI  | Memorandum in support of motion to allow petitioner to serve discovery Robert Elgee   |
|            | NOSV | TRACI  | Notice Of Service Robert Elgee  |
| 11/2/2012  | NOTH | TRACI  | Notice Of Hearing Robert Elgee  |
|            | NOSV | TRACI  | Notice Of Service Robert Elgee  |
|            | HRSC | TRACI  | Hearing Scheduled (Motion 11/16/2012 02:00 PM) mtn to request discovery Robert Elgee  |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date       | Code | User   | Judge   |
|------------|------|--------|---|
| 11/16/2012 | CMIN | SHELLY | Court Minutes<br>Hearing type:<br>Hearing date: 11/16/2012<br>Time: 12:31 pm<br>Courtroom:<br>Court reporter:<br>Minutes Clerk: Shelly Creek<br>Tape Number:  |
|            | CMIN | SHELLY | Court Minutes<br>Hearing type: Motion<br>Hearing date: 11/16/2012<br>Time: 2:00 pm<br>Courtroom:<br>Court reporter: Sue Israel<br>Minutes Clerk: Shelly Creek<br>Tape Number:<br>Brian Tanner for the Petitioner<br>John Horgan for the State of Idaho<br>Kent Jorgenson appearing by telephone |
|            | DCHH | SHELLY | Hearing result for Motion scheduled on 11/16/2012 02:00 PM: District Court Hearing Held<br>Court Reporter: Sue Israel<br>Number of Transcript Pages for this hearing estimated: mtn to request discovery<br>Ken Jorgenson to appear by phone  |
|            | ORDR | SHELLY | Order Allowing Discovery Pursuant to Idaho Criminal Rule 57(b)  |
| 12/10/2012 | NOSV | TRACI  | Notice Of Service   |
|            | NOSV | TRACI  | Notice Of Service   |
| 12/14/2012 | NOSV | TRACI  | Notice Of Service   |
| 12/31/2012 | NOTH | TRACI  | Notice Of Hearing   |
|            | MOTN | TRACI  | Motion to compel  |
|            | MEMO | TRACI  | Memorandum in support of motion to compel   |
|            | AFFD | TRACI  | Affidavit of John C Lynn in support of motion to compel   |
|            | AFFD | TRACI  | Affidavit of Tom Berry in support of motion to compel   |
| 1/7/2013   | OBJC | TRACI  | Objection to petitioner's motion to compel  |
|            | AFFD | TRACI  | Affidavit of Mark A Kubinski  |
|            | AFFD | TRACI  | Affidavit of Kenneth K Jorgensen  |
| 1/15/2013  | HRSC | TRACI  | Hearing Scheduled (Motion to Compel 01/18/2013 02:00 PM)  |
| 1/16/2013  | PETN | TRACI  | Petition reply to state's objection re: motion to compel  |
|            | AFFD | TRACI  | Affidavit of John C Lynn in support of petitioner's reply to objection re: motion to compel   |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User   | Judge  |
|-----------|------|--------|--|
| 1/22/2013 | HRVC | SHELLY | Hearing result for Motion to Compel scheduled on 01/18/2013 02:00 PM: Hearing Vacated  |
| 1/23/2013 | HRSC | SHELLY | Hearing Scheduled (Motion to Compel 01/30/2013 10:00 AM) IN BLAINE COUNTY  |
|           |      | SHELLY | Notice Of Hearing  |
| 1/30/2013 | HRHD | TRACI  | Hearing result for Motion to Compel scheduled on 01/30/2013 10:00 AM: Hearing Held IN BLAINE COUNTY--Court reporter: Sue Israel over 100 pages |
| 2/5/2013  | MISC | TRACI  | Court's email to counsel   |
|           | NOSV | TRACI  | Notice Of Service  |
|           | MOTN | TRACI  | Motion to appoint forensic expert at county expense.   |
| 2/6/2013  | ORDR | TRACI  | Order appointing Global Compusearch, LLC as compter forenseic experts at county expense.   |
|           | NOSV | TRACI  | Notice Of Service  |
|           | ORDR | TRACI  | Order granting petitioner's motion to compel   |
|           | ORDR | TRACI  | Order on motion to compel  |
| 2/8/2013  | NOSV | TRACI  | Notice Of Service  |
|           | MOTN | TRACI  | Motion to appoint Compusearch, LLC as computer foresnsic experts for the court.  |
| 2/13/2013 | CMIN | TRACI  | Court Minutes from Blaine Co.  |
| 2/20/2013 | ORDR | TRACI  | amended order appointing Global Compusearch. llc as computer forensic experts for the court at county expense.                                 |
|           | PTLM | TRACI  | Pre-trial Order  |
| 3/15/2013 | MOTN | SHELLY | Motion to Stay Computer Forensic Investigation   |
|           | AFFD | SHELLY | Affidavit of Scott Birch   |
|           | MOTN | SHELLY | Motion to Reconsider Appointment of Computer Forensic Expert   |
|           | MOTN | SHELLY | Motion to Shorten Time   |
|           | NOTH | TRACI  | Notice Of telephonic Hearing   |
| 3/18/2013 | CMIN | TRACI  | Court Minutes from Blaine Co   |
| 3/22/2013 | ORDR | TRACI  | Order on motion to shorten time  |
| 3/29/2013 | NOSV | TRACI  | Notice Of Service  |
|           | NOSV | TRACI  | Notice Of Service  |
|           | MOTN | TRACI  | 2nd Motion for summary dismissal   |
|           | AFFD | TRACI  | Affidavit of Kenneith K Jorgensen  |
|           | BREF | TRACI  | Brief in support of 2nd motion for summary dismissal   |
|           | NOSV | TRACI  | Notice Of Service  |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User   |   | Judge        |
|-----------|------|--------|---|--------------|
| 4/12/2013 | ORDR | TRACI  | Order on request for court approval of expenses   | Robert Elgee |
|           | NOTH | TRACI  | Notice Of Hearing   | Robert Elgee |
|           | HRSC | TRACI  | Hearing Scheduled (Motion 05/24/2013 02:00 PM) mtn for 2nd summary dismissal  | Robert Elgee |
| 4/16/2013 | MOTN | TRACI  | Peitioner's second Motion to compel   | Robert Elgee |
|           | MEMO | TRACI  | Memorandum in support of Petitioner's second moiton to compel   | Robert Elgee |
|           | AFFD | TRACI  | Affidavit of John C Lynn in support of petitioner's second motion to compel   | Robert Elgee |
| 4/19/2013 | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|           | RESP | TRACI  | Response To petitioner's second motion to compel  | Robert Elgee |
| 4/22/2013 | NOTH | TRACI  | Notice Of Hearing   | Robert Elgee |
| 5/15/2013 | BREF | TRACI  | Reply Brief in suport of motion for summary dismissal   | Robert Elgee |
|           | AFFD | TRACI  | Second Affidavit of Kenneth K Jorgensen   | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|           | REPL | TRACI  | Petitioner's Reply in support of second motion to compel  | Robert Elgee |
| 5/16/2013 | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|           | RESP | TRACI  | Response to State's reply brief in support of its second motion for summary dismissal   | Robert Elgee |
| 5/17/2013 | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|           | RESP | TRACI  | Response to state's brief in suppor of second motion for summary dismissal  | Robert Elgee |
| 5/24/2013 | CMIN | SHELLY | Court Minutes<br>Hearing type: Motion<br>Hearing date: 5/24/2013<br>Time: 2:00 pm<br>Courtroom:<br>Court reporter: Sue Israel<br>Minutes Clerk: Shelly Creek<br>Tape Number:<br>Brian tanner<br>Lawrence Wasden   | Robert Elgee |
|           | DCHH | SHELLY | Hearing result for Motion scheduled on 05/24/2013 02:00 PM: District Court Hearing Held<br>Court Reporter: Maureen Newton<br>Number of Transcript Pages for this hearing estimated: mtn for 2nd summary dismissal | Robert Elgee |
|           | MISC | SHELLY | State's Motion to Dismiss is denied. Mr. Tanner to prepare order.   | Robert Elgee |
|           | MISC | SHELLY | Court in Blaine to contact counsel regarding setting date for scheduling conference.  | Robert Elgee |
|           |      |        |   |              |
|           |      |        |   |              |



Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User   |   | Judge        |
|-----------|------|--------|---|--------------|
| 5/28/2013 | NOTC | TRACI  | Notice and agreement re: purchase of audio recording magistrate and/or district court proceedings.                                | Robert Elgee |
|           | NOTC | TRACI  | Notice and agreement re: purchase of audio recording magistrate and/or district court proceedings.                                | Robert Elgee |
| 5/31/2013 | HRSC | SHELLY | Hearing Scheduled (Scheduling Conference 06/24/2013 01:30 PM) IN BLAINE COUNTY PARTIES TO CONFERENCE CALL IN AND THEN CALL BLAINE | Robert Elgee |
|           |      | SHELLY | Notice Of Hearing   | Robert Elgee |
| 6/6/2013  | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|           | RESP | TRACI  | Response To state's motion requesting the court to reconsider denial of summary dismissal   | Robert Elgee |
| 6/10/2013 | ORDR | TRACI  | Order denying the state's second motion for summary dismissal pursuant to IC19-4906   | Robert Elgee |
|           | ORDR | TRACI  | Order denying in part and approving in part the petitioner's second motion to compel  | Robert Elgee |
| 6/14/2013 | MOTC | KAREN  | Petitioner's Third Motion To Compel   | Robert Elgee |
|           | MEMO | KAREN  | Memorandum in Support of Petitioner's Third Motion To Compel  | Robert Elgee |
|           | AFFD | KAREN  | Affidavit of John C. Lynn in Support of Petitioner's Third Motion To Compel   | Robert Elgee |
| 7/1/2013  | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
| 7/5/2013  | ORDR | TRACI  | Order on motion to reconsider denial of summary dismissal   | Robert Elgee |
|           | ORDR | TRACI  | Order for submission of report of expert  | Robert Elgee |
|           | HRSC | TRACI  | Hearing Scheduled (Evidentiary 10/17/2013 09:00 AM) location may change   | Robert Elgee |
|           |      | TRACI  | Notice Of Hearing   | Robert Elgee |
|           | HRSC | TRACI  | Hearing Scheduled (Evidentiary 08/01/2013 09:00 AM) To be held in Blaine Co.  | Robert Elgee |
| 7/10/2013 | CONT | TRACI  | Continued (Evidentiary 10/16/2013 09:00 AM) location may change   | Robert Elgee |
|           |      | TRACI  | Amended Notice Of Hearing   | Robert Elgee |
|           |      | TRACI  | declaration of Jaimi Dean Charboneau dated 6-7-13   | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|           | SUPP | TRACI  | Supplemental Response To State's Motion Requesting the court to reconsider denial of its second motion to summarily dismiss       | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|           | AFFD | TRACI  | Affidavit of Greg S Silvey  | Robert Elgee |
|           | RESP | TRACI  | Response To third motion to compel  | Robert Elgee |
|           |      |        |   |              |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User   | Judge  |
|-----------|------|--------|--|
| 7/15/2013 | HRSC | TRACI  | Hearing Scheduled (Motion to Compel 07/22/2013 10:00 AM) by telephone to be held in Blaine Co  |
|           | MOTN | TRACI  | Motion to include Glenda Desanno Shedd in investigation conducted by Compusearch LLC   |
|           | NOSV | TRACI  | Notice Of Service  |
|           | AFFD | TRACI  | Affidavit of Brian M Tanner  |
|           | NOSV | TRACI  | Notice Of Service  |
|           | NOTH | TRACI  | Notice Of Hearing  |
|           | STIP | TRACI  | Stipulation for return of exhibits   |
| 7/18/2013 | REPL | TRACI  | Petitioner's Reply to state's response to third motion to compel.  |
|           | AFFD | TRACI  | Affidavit of John C Lynn in support of petitioner's reply to state's response to third motion to compel.   |
| 7/22/2013 | HRHD | TRACI  | Hearing result for Motion to Compel scheduled on 07/22/2013 10:00 AM: Hearing Held by telephone to be held in Blaine Co  |
| 7/26/2013 | NOTC | TRACI  | Notice of in camera submission   |
|           | MISC | TRACI  | in camera submission of sealed document and recording (under seal) x2 (Judge Elgee has these 8-23-13) (Judge Elgee returned these on 9-11-13. CDs were given to Mr. Lynn and Mr. Tanner along with a copy of the transcripts. Contents are no longer under seal) |
|           | ORDR | TRACI  | Order for return of exhibits   |
|           | ORDR | TRACI  | Order granting in part and denying in part petitioner's third motion to compel.  |
| 7/29/2013 | MOTN | TRACI  | supplemental motion to include Blenda Desanno Shedd in investigation conducted by Compusearch LLC  |
| 8/1/2013  | HRHD | TRACI  | Hearing result for Telephone Hearing scheduled on 08/01/2013 09:00 AM: Hearing Held To be held in Blaine Co.   |
| 8/2/2013  | ORDR | TRACI  | Order granting supplemental motion to include Blenda Desanno Shedd in investigation conducted by Compusearch LLC   |
| 8/7/2013  | MOTN | TRACI  | Motion to depose cour's expert, Compusearch LLC  |
|           | ORDR | TRACI  | Order allowing the deposition of Compusearch, LLC  |
|           | NOSV | TRACI  | Notice Of Service  |
| 8/13/2013 | HRSC | SHELLY | Hearing Scheduled (Status 08/23/2013 02:00 PM) Telephone Hearing. Mr. Jorgensen to initiate phone call   |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User   |  | Judge        |
|-----------|------|--------|--|--------------|
| 8/13/2013 |      | SHELLY | Notice Of Hearing  | Robert Elgee |
|           | MISC | TRACI  | brief in support of assertion of work-product privilege  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
| 8/22/2013 | RESP | TRACI  | Response to State's assertion of work-product privilege  | Robert Elgee |
|           | AFFD | TRACI  | General Affidavit  | Robert Elgee |
|           | AFFD | TRACI  | 3rd Affidavit of Kenneth K Jorgensen   | Robert Elgee |
|           | MOTN | TRACI  | Motion to reconsider denial of summary dismissal   | Robert Elgee |
| 8/23/2013 | CMIN | SHELLY | Court Minutes<br>Hearing type: Status<br>Hearing date: 8/23/2013<br>Time: 8:50 am<br>Courtroom:<br>Court reporter: Sue Israel<br>Minutes Clerk: Shelly Creek<br>Tape Number:<br>Brian Tanner   | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
|           | DCHH | SHELLY | Hearing result for Status scheduled on 08/23/2013 02:00 PM: District Court Hearing Held<br>Court Reporter: Sue Israel<br>Number of Transcript Pages for this hearing estimated: Telephone Hearing.<br>Mr. Jorgensen to initiate phone call | Robert Elgee |
|           | HRSC | SHELLY | Hearing Scheduled (Hearing Scheduled 09/09/2013 10:30 AM) Held in Blaine County  | Robert Elgee |
|           |      | SHELLY | Notice Of Hearing  | Robert Elgee |
|           | NOSV | SHELLY | Notice Of Service  | Robert Elgee |
|           |      |        |  |              |
| 9/4/2013  | MISC | TRACI  | state's request to appear by telephone   | Robert Elgee |
| 9/5/2013  | ORDR | TRACI  | Order granting state's motion to appear by telephone   | Robert Elgee |
|           | ORDR | TRACI  | Order regarding authenticity of Tira Arbaugh letter  | Robert Elgee |
|           | HRHD | TRACI  | Hearing result for Hearing Scheduled scheduled on 09/09/2013 10:30 AM: Hearing Held Held in Blaine County  | Robert Elgee |
| 9/11/2013 | AFFD | TRACI  | Affidavit of Paul R Panther  | Robert Elgee |
|           | OBJC | TRACI  | Objection to petitioner's order regarding authenticity of Tira Arbaugh letter  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
|           | ORDR | TRACI  | amended order regarding authenticity of Tira Arbaugh letter  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date       | Code | User   |   | Judge        |
|------------|------|--------|---|--------------|
| 9/11/2013  | MOTN | TRACI  | Motion to transport   | Robert Elgee |
|            | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|            | MOTN | TRACI  | Motion to transport   | Robert Elgee |
|            | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|            | SUPP | TRACI  | Supplemental Response to State's assertion of work-product privilege  | Robert Elgee |
|            | HRSC | TRACI  | Hearing Scheduled (Hearing Scheduled 10/02/2013 02:00 PM) to be held in Blaine Co.                                | Robert Elgee |
| 9/12/2013  |      | TRACI  | Notice Of Hearing   | Robert Elgee |
|            | PORT | TRACI  | Order To Transport  | Robert Elgee |
|            | ORDR | TRACI  | Order denying state's assertion of work-product privilege re:petitioner's request fro production no. 25.          | Robert Elgee |
| 9/13/2013  | NOSV | TRACI  | Notice Of Service   | Robert Elgee |
|            | PORT | TRACI  | Order To Transport  | Robert Elgee |
| 10/2/2013  | HRHD | TRACI  | Hearing result for Hearing Scheduled scheduled on 10/02/2013 02:00 PM: Hearing Held to be held in Blaine Co.      | Robert Elgee |
| 10/7/2013  | NOSV | KAREN  | Notice Of Service   | Robert Elgee |
| 10/9/2013  | NOSV | SHELLY | Notice Of Service   | Robert Elgee |
| 10/10/2013 | NOTC | SHELLY | Notice of Withdrawal of Claim of Attorney Work Product Privilege  | Robert Elgee |
| 10/11/2013 | MOTN | SHELLY | Petitioner's Motion to Exclude State's Witnesses  | Robert Elgee |
|            | AFFD | SHELLY | Affidavit of John C. Lynn in Support of Petitioner's Motion to Exclude State's Witnesses                          | Robert Elgee |
|            | MISC | SHELLY | Petitioner's Objection to State's Response to Request for Admission No. 6   | Robert Elgee |
|            | AFFD | SHELLY | Affidavit of John C. Lynn in Support of Petitioner's Objection to State's Response to Request for Admission No. 6 | Robert Elgee |
|            | NOSV | SHELLY | Notice Of Service   | Robert Elgee |
| 10/15/2013 | MISC | SHELLY | Objection to Motion to Exclude Witnesses  | Robert Elgee |
| 10/16/2013 | HRHD | SHELLY | Hearing Held in Blaine County   | Robert Elgee |
|            | HRHD | TRACI  | Hearing result for Evidentiary scheduled on 10/16/2013 09:00 AM: Hearing Held hearing to be held in Blaine County | Robert Elgee |
| 10/17/2013 | RTSV | SHELLY | Personal Return Of Service (Jimmy Griggs)   | Robert Elgee |
|            | HRHD | SHELLY | Hearing Held In Blaine County   | Robert Elgee |
| 11/12/2013 | HRSC | SHELLY | Hearing Scheduled (Evidentiary 11/25/2013 03:00 PM) Evidentiary & Scheduling Conference in BLAINE COUNTY          | Robert Elgee |
|            |      | SHELLY | Notice Of Hearing   | Robert Elgee |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date       | Code | User   |   | Judge        |
|------------|------|--------|---|--------------|
| 11/14/2013 | MOTN | TRACI  | Motion for preparation of evidentiary hearing transcript at county expense  | Robert Elgee |
| 11/18/2013 | NOTC | SHELLY | Notice of Submission of Deposition of William Unger (with CD attached)  | Robert Elgee |
| 11/19/2013 | HRSC | SHELLY | Hearing Scheduled (Hearing Scheduled 12/09/2013 03:30 PM) Oral Argument in BLAINE COUNTY  | Robert Elgee |
|            |      | SHELLY | Notice Of Hearing   | Robert Elgee |
| 11/21/2013 | ORDR | TRACI  | Order for preperation of evidentiary hearing transcript.  | Robert Elgee |
|            | STIP | TRACI  | Stipulation to submit the deposition of K Randy Severe in lieu of testimony.  | Robert Elgee |
| 11/25/2013 | HRHD | TRACI  | Hearing result for Evidentiary scheduled on 11/25/2013 03:00 PM: Hearing Held Evidentiary & Scheduling Conference in BLAINE COUNTY  | Robert Elgee |
| 11/26/2013 | MOTN | SHELLY | Motion to Substitute Exhibit  | Robert Elgee |
| 12/9/2013  | MISC | SHELLY | Proposed Findings and Conclusions of Law in Regard to the Issue of Concealment - copy scanned to Judge Elgee  | Robert Elgee |
|            | DCHH | SHELLY | Hearing result for Hearing Scheduled scheduled on 12/09/2013 03:30 PM: District Court Hearing Held in BLAINE COUNTY<br>Court Reporter: Sue Israel in BLAINE COUNTY<br>Number of Transcript Pages for this hearing estimated: Oral Argument in BLAINE COUNTY | Robert Elgee |
| 12/11/2013 | MISC | SHELLY | Blaine County Minutes   | Robert Elgee |
| 12/13/2013 | NOTC | TRACI  | Notice and agreement re purchase of audio recording of magistrate and/or district court proceedings.  | Robert Elgee |
| 4/14/2014  | HRSC | TRACI  | Hearing Scheduled (Scheduling Conference 05/09/2014 02:00 PM)   | Robert Elgee |
|            |      | TRACI  | Notice Of Hearing   | Robert Elgee |
|            | MISC | TRACI  | Charboneau findings of fact and conclusions of law  | Robert Elgee |
| 4/29/2014  | NOTC | TRACI  | Notice and agreement re: purchase of audio recording  | Robert Elgee |
| 5/2/2014   | SUBR | TRACI  | Subpoena Returned   | Robert Elgee |
|            | OBJC | TRACI  | Objection to discovery  | Robert Elgee |
| 5/8/2014   | RESP | TRACI  | Petitioner's Response To State's Objeciton to Discovery   | Robert Elgee |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User   |  | Judge        |
|-----------|------|--------|--|--------------|
| 5/9/2014  | CMIN | TRACI  | Court Minutes<br>Hearing type: Scheduling Conference<br>Hearing date: 5/9/2014<br>Time: 3:30 pm<br>Courtroom: Courtroom #2 - District Courtroom<br>Court reporter:<br>Minutes Clerk: Traci Brandebourg<br>Tape Number: | Robert Elgee |
|           | DCHH | TRACI  | Hearing result for Scheduling Conference<br>scheduled on 05/09/2014 02:00 PM: District<br>Court Hearing Held<br>Court Reporter: Sue Israel<br>Number of Transcript Pages for this hearing<br>estimated: telephone      | Robert Elgee |
| 5/12/2014 | HRSC | TRACI  | Hearing Scheduled (Scheduling Conference<br>08/08/2014 02:00 PM) telephone   | Robert Elgee |
|           |      | TRACI  | Notice Of Hearing  | Robert Elgee |
| 5/21/2014 | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
| 5/29/2014 | NOTC | TRACI  | notice and agreement re: purchase of audio   | Robert Elgee |
| 6/3/2014  | ORDR | TRACI  | Order re: petitioner's fourth set of request for<br>production of documents to respondent.   | Robert Elgee |
| 6/9/2014  | MISC | TRACI  | Subpoena duces tecum for John Horgan<br>pursuant to IRCP 45  | Robert Elgee |
|           | NOTD | TRACI  | Notice Of Deposition   | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
|           | MISC | TRACI  | Subpoena duces tecum for Larry H Webb<br>pursuant to IRCP 45   | Robert Elgee |
|           | NOTD | TRACI  | Notice Of Deposition   | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
| 6/12/2014 | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
| 6/13/2014 | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
| 6/24/2014 | NOSV | SHELLY | Notice Of Service  | Robert Elgee |
| 6/27/2014 | NOSV | SHELLY | Notice Of Service  | Robert Elgee |
| 7/16/2014 | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
| 7/24/2014 | NOSV | TRACI  | Notice Of Service  | Robert Elgee |
| 8/4/2014  | MOTN | TRACI  | Motion to shorten time   | Robert Elgee |
|           | MOTN | TRACI  | Motion to conduct depositions  | Robert Elgee |
|           | NOSV | TRACI  | Notice Of Filing and Service   | Robert Elgee |
|           | MISC | TRACI  | submission of supreme court record and<br>transcript in Jerome County cses 1027 & 1028   | Robert Elgee |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User  | Judge   |
|-----------|------|-------|---|
| 8/4/2014  | AFFD | TRACI | Affidavit of Tom Berry  |
|           | AFFD | TRACI | Sworn Affidavit   |
|           | MOTN | TRACI | Petitioner's Motion for summary judgment  |
|           | NOTC | TRACI | Notice of change of address   |
|           | MEMO | TRACI | Memorandum in support of petitioner's motion for summary judgment   |
|           | AFFD | TRACI | Affidavit of John C Lynn in support of petitioner's motion for summary judgment.  |
| 8/8/2014  | OBJC | TRACI | Peitioner's Objection State's motion to shorten time and motion to conduct deposition.  |
|           | CMIN | TRACI | Court Minutes<br>Hearing type: Scheduling Conference<br>Hearing date: 8/8/2014<br>Time: 2:35 pm<br>Courtroom: Courtroom #2 - District Courtroom<br>Court reporter: Sue Israel<br>Minutes Clerk: Traci Brandebourg<br>Tape Number:<br>Brian Tanner<br>by phone:<br>Ken Jorgesen<br>John Lynn |
|           | DCHH | TRACI | Hearing result for Scheduling Conference scheduled on 08/08/2014 02:00 PM: District Court Hearing Held<br>Court Reporter: Candace Childers<br>Number of Transcript Pages for this hearing estimated: telephone  |
|           | HRSC | TRACI | Hearing Scheduled (Motion for Summary Judgment 09/19/2014 02:00 PM)   |
|           | ORDR | TRACI | Order granting permission to conduct depositions.   |
|           |      | TRACI | Notice Of Hearing   |
| 8/12/2014 | PETN | TRACI | Petitioner's sixth set of interrogatories aqnd request for peoduction of documents  |
| 8/14/2014 | NOTD | TRACI | Notice Of Taking Deposition of Freerick Bennett   |
|           | NOTD | TRACI | Notice Of Taking Deposition of Betsy Charboneau Crabtree  |
|           | NOSV | TRACI | Notice Of Service   |
|           | NOSV | TRACI | Notice Of Service   |
| 9/8/2014  | BREF | TRACI | Brief in opposition to petitioner's motion for summary judgment   |
|           | AFFD | TRACI | Affidavit of Kenneth K Jorgensen  |
| 9/12/2014 | NOSV | TRACI | Notice Of Service   |
| 9/15/2014 | NOSV | TRACI | Notice Of Service and filing  |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date       | Code | User   | Judge  |
|------------|------|--------|--|
| 9/15/2014  | REPL | TRACI  | Petitioner's Reply memorandum re: motion for summary judgment  |
|            | AFFD | TRACI  | Supplemental Affidavit of John C Lynn in support of petitioner's motion for summary judgment.  |
|            | MOTN | TRACI  | Motion for order of transport  |
| 9/16/2014  | PORT | TRACI  | Order for Transport of transport   |
| 9/19/2014  | CMIN | TRACI  | Court Minutes<br>Hearing type: Motion for Summary Judgment<br>Hearing date: 9/19/2014<br>Time: 2:00 pm<br>Courtroom: Courtroom #2 - District Courtroom<br>Court reporter: Sue Israel<br>Minutes Clerk: Traci Brandebourg<br>Tape Number:<br>John Lynn/Brian Tanner on behalf of Jaimi Charboneau (present)<br>Ken Jorgesen on behalf of the State of Idaho |
|            | DCHH | TRACI  | Hearing result for Motion for Summary Judgment scheduled on 09/19/2014 02:00 PM: District Court Hearing Held<br>Court Reporter: Sue Israel<br>Number of Transcript Pages for this hearing estimated:   |
| 9/23/2014  | SUPP | SHELLY | Supplemental Response To State's Brief in Opposition to Summary Judgment   |
|            | NOTC | TRACI  | Notice and agreement re: purchase of audio recording magistrate and/or district court proceedin  |
| 9/29/2014  | ORDR | TRACI  | Order following summary judgment hearing   |
| 10/17/2014 | BREF | TRACI  | Supplemental Brief in opposition to petitioner's motion for summary judgment   |
|            | AFFD | TRACI  | Affidavit of Joe Aman  |
|            | AFFD | TRACI  | Affidavit of Ken Boals   |
|            | AFFD | TRACI  | Affidavit of Kenneth K Jorgensen   |
| 11/3/2014  | NOSV | TRACI  | Notice of filing and Service   |
|            | MEMO | TRACI  | Petitioner's Memorandum re: order follwoing summary judgment hearing   |
|            | AFFD | TRACI  | Second supplemental Affidavit of John C Lynn in support of petitioner's motion for summary judgment.   |
| 11/17/2014 | REPL | TRACI  | Reply to petitioner's memorandum   |
| 11/19/2014 | NOTC | TRACI  | Notice of filing and service   |
|            | REPL | TRACI  | Petitioner's reply to state's supplemental brief in opposition to petitioner's motion for summary judgment   |



Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date       | Code | User   |   | Judge        |
|------------|------|--------|---|--------------|
| 11/19/2014 | MISC | TRACI  | Third supplemental affidavit of John C Lynn in support of petitioner's motion for summary judgment  | Robert Elgee |
| 11/21/2014 | MOTN | TRACI  | Motion to strike  | Robert Elgee |
| 11/25/2014 | MISC | TRACI  | #1: Court's email to counsel re: procedural aspects of case and recently disclosed evidence.  | Robert Elgee |
|            | MISC | TRACI  | #2: Court's email to counsel re: procedural aspects of case and recently disclosed evidence.  | Robert Elgee |
| 11/26/2014 | NOSV | TRACI  | Notice Of Filing and Service  | Robert Elgee |
|            | RESP | TRACI  | Petitioner's Response to State's motion to strike   | Robert Elgee |
|            | HRSC | TRACI  | Hearing Scheduled (Telephone Hearing 12/01/2014 02:30 PM) to be held in Blaine County   | Robert Elgee |
|            |      | TRACI  | Notice Of Hearing   | Robert Elgee |
| 12/1/2014  | HRHD | TRACI  | Hearing result for Telephone Hearing scheduled on 12/01/2014 02:30 PM: Hearing Held to be held in Blaine County                                     | Robert Elgee |
| 12/3/2014  | ORDR | TRACI  | Procedural Order  | Robert Elgee |
| 12/23/2014 | BREF | TRACI  | Brief in support of motion to strike  | Robert Elgee |
|            | AFFD | TRACI  | Affidavit of Kenneth K Jorgensen in support of motion to strike.  | Robert Elgee |
| 1/6/2015   | MISC | SHELLY | Petitioner's Final Reply re: State's Motion to Strike (copy emailed to Josh in Blaine)  | Robert Elgee |
| 3/23/2015  | DEOP | TRACI  | Decision on motion for summary judgment   | Robert Elgee |
| 3/25/2015  | NOTH | TRACI  | Notice Of Hearing   | Robert Elgee |
| 3/26/2015  | HRSC | TRACI  | Hearing Scheduled (Motion 04/10/2015 02:00 PM) motion for bond and status   | Robert Elgee |
| 3/27/2015  | MOTN | TRACI  | Motion for transport  | Robert Elgee |
| 3/31/2015  | MOTN | TRACI  | Motion to bar further prosecution   | Robert Elgee |
|            | PORT | TRACI  | Order To Transport  | Robert Elgee |
| 4/2/2015   | MOTN | TRACI  | Motion for judgment and to vacate hearing   | Robert Elgee |
|            | MOTN | TRACI  | Motion for bond   | Robert Elgee |
| 4/3/2015   | NOTH | TRACI  | Notice Of Hearing (motion to bar futher prosecution: this motion will NOT be heard on 4-10-15 @ 2:00 p.m. due to State's objection per Judge Elgee) | Robert Elgee |
| 4/6/2015   | MISC | TRACI  | Court's email to counsel dated 4-2-15 re: case status   | Robert Elgee |
|            | MOTN | TRACI  | Motion to shorten time  | Robert Elgee |
|            | MOTN | TRACI  | Motion for stay of judgment   | Robert Elgee |
|            | OBJC | TRACI  | Objection to motion for bond  | Robert Elgee |
|            | NOTC | TRACI  | Notice of appeal  | Robert Elgee |

Jaimi Dean Charboneau #22091, Plaintiff vs State Of Idaho, Defendant

| Date      | Code | User   | Judge  |
|-----------|------|--------|--|
| 4/6/2015  | REPL | TRACI  | Petitioner's reply to state's response to motion to bar further prosecution and motion for reconsideration   |
|           | APSC | TRACI  | Appealed To The Supreme Court  |
| 4/8/2015  | RESP | TRACI  | Response To state's objection to motion for bond   |
| 4/9/2015  | MOTN | TRACI  | Motion to shorten time   |
|           | MOTN | TRACI  | Motion for continued appointment of counsel on appeal  |
|           | REQT | TRACI  | Request to obtain approval to video record, broadcast or photograph a court proceeding--GRANTED  |
|           | ORDR | TRACI  | Order for continued appointment of counsel on appeal   |
| 4/10/2015 | CMIN | TRACI  | Court Minutes<br>Hearing type: Motion<br>Hearing date: 4/10/2015<br>Time: 2:07 pm<br>Courtroom: Courtroom #2 - District Courtroom<br>Court reporter:<br>Minutes Clerk: Traci Brandebourg<br>Tape Number:       |
|           | DCHH | TRACI  | Hearing result for Motion scheduled on 04/10/2015 02:00 PM: District Court Hearing Held<br>Court Reporter: Maureen Newton<br>Number of Transcript Pages for this hearing estimated: motion for bond and status |
| 4/13/2015 | MOTN | TRACI  | Motion to prepare transcript   |
| 4/14/2015 | JDMT | TRACI  | Judgment   |
|           | CDIS | TRACI  | Civil Disposition entered for: State Of Idaho, Other Party: Charboneau #22091, Jaimi Dean, Subject. Filing date: 4/14/2015   |
|           | NOTC | TRACI  | Amended notice of appeal   |
| 4/17/2015 | ORDR | TRACI  | Order to prepare transcript  |
| 4/21/2015 | ORDR | SHELLY | Order (filed by SC)  |
| 5/6/2015  | NOTC | TRACI  | Notice of cross appeal   |

Inmate Name Jaimi Dean Charboneau  
IDOC No. 22091  
Address P.O. Box 14, C-64-A  
Boise, Idaho 83707

Petitioner / Prose

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2011 JUN 15 AM 11 21

Michelle Emerson

BY [Signature]

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
STATE OF IDAHO, )  
 )  
Respondent. )  
 )

Case No. CV 2011-638

PETITION AND AFFIDAVIT  
FOR POST CONVICTION  
RELIEF AND REQUEST  
THAT THE COURT TAKE  
JUDICIAL NOTICE OF  
THE RECORD

Petitioner Reserves the  
Right to Amend this Petition

The Petitioner alleges:

1. Place of detention if in custody: Idaho State Correctional Institution
2. Name and location of the Court which imposed judgement/sentence: District Court, Jerome County, Jerome, Idaho
3. The case number and the offense or offenses for which sentence was imposed:
  - (a) Case Number: 1027 & 1028
  - (b) Offense Convicted: First degree murder
4. The date upon which sentence was imposed and the terms of sentence:
  - a. Date of Sentence: October, 1991
  - b. Terms of Sentence: "Fixed life "

PETITION FOR POST CONVICTION RELIEF - 1

Revised: 10/13/05

" I plead **not guilty**, because I am innocent."

5. Check whether a finding of guilty was made after a plea:

☐ Of guilty

☒ Of not guilty

6. Did you appeal from the judgment of conviction or the imposition of sentence?

☒ Yes ☐ No

If so, what was the Docket Number of the Appeal? (Please see attached)

7. State concisely all the grounds on which you base your application for post conviction relief: (Use additional sheets if necessary.)

(a) Petitioner asserts ~~New Matter~~ available to him and thereby  
available to this Court. Upon judicial review the factual evidence

(b) ~~now~~ available will prove a genuine issue of material fact  
supporting a valid ~~Brady~~ claim and a legal malpractice claim

(c) which I learned about on March 18, 2011. (Please see attachments  
for additional information.)

(Paragraph no. 7 is continued on separate sheet):

8. Prior to this petition, have you filed with respect to this conviction:

a. Petitions in State or Federal Court for habeas corpus? Yes

b. Any other petitions, motions, or applications in any other court? Yes

c. If you answered yes to a or b above, state the name and court in which each  
petition, motion or application was filed:

~~Petitioner's history on appeal is a matter of record~~  
available to the Court as required. It need not be  
reiterated here.

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:
- (a) Although barred by the doctrine of res judicata from  
litigating an assertion of ineffective assistance of defense  
counsel, petitioner is compelled to asserts an overt incompetance by defense representation throughout his lengthy trial  
(b) and appeals history. Facts that should have been available  
(c) to the Court for adjudication could have been discovered with

(Paragraph no. 9 is continued on separate sheet):

10. Are you seeking leave to proceed in forma pauperis, that is, requesting the proceeding be at county expense? (If your answer is "yes", you must fill out a Motion to Proceed in Forma Pauperis and supporting affidavit.)

☒ Yes      [ ] No

11. Are you requesting the appointment of counsel to represent you in this case? (If your answer is "yes", you must fill out a Motion for the Appointment of Counsel and supporting affidavit, as well as a Motion to Proceed In Forma Pauperis and supporting affidavit.)

☒ Yes      [ ] No

12. State specifically the relief you seek:

Wherefore, petitioner respectfully requests and prays that this  
Honorable Court order an immediate answer from respondent. In the  
alternative petitioner would welcome an evidentiary hearing to  
present his witness testimony and evidence. Petitioner requests  
such other relief as this Court deems appropriate and just.

13. This Petition may be accompanied by affidavits in support of the petition. (Forms for this are available.)

DATED this 2 day of June, 2011.

(Petitioner reserves the right to amend this petition)

Jaimi Dean Charboneau  
Petitioner Jaimi Dean Charboneau

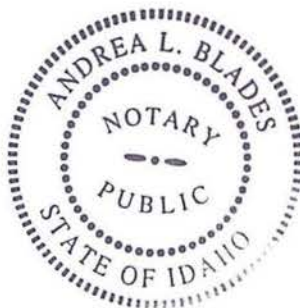
STATE OF IDAHO )  
 ) ss  
County of Ada )

Jaimi Dean Charboneau, being sworn, deposes and says that the party is the  
Petitioner in the above-entitled appeal and that all statements in this PETITION FOR POST  
CONVICTION RELIEF are true and correct to the best of his or her knowledge and belief.

Jaimi Dean Charboneau  
Jaimi Dean Charboneau  
Petitioner

SUBSCRIBED AND SWORN and AFFIRMED to before me this 2 day of  
June, 2011.

(SEAL)



Andrea L. Blades  
Notary Public for Idaho  
Commission expires: 03/04/2016.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 2 day of June, 2011, I mailed a copy of this PETITION FOR POST CONVICTION RELIEF for the purposes of filing with the court and of mailing a true and correct copy via prison mail system to the U.S. mail system to:

Jerome County Prosecuting Attorney

300 North Lincoln  
Room 307  
Jerome, Idaho 83338

  
Jaimi Dean Charboneau  
Petitioner



CN 2011-638

AFFIDAVIT OF FACTS IN SUPPORT OF POST-CONVICTION PETITION

DISTRICT COURT  
FIFTH JUDICIAL DIST  
COUNTY IDAHO

STATE OF IDAHO )  
 ) ss  
COUNTY OF Ada )

2011 JUN 15 AM 11 21

*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

Jaimi Dean Charboneau, being first duly sworn on oath, deposes and says:

That on or/about March 18, 2011, a correctional officer at  
the Idaho Correctional Institution in Orofino, (ICIO),  
"Cpl. Mike Hiskett", brought petitioner a large envelope  
that he had discovered in one of the offices at (ICIO). This  
envelope contained several legal documents which were all related  
to petitioner's legal matters. Some of the documents that were  
found inside this envelope that Cpl. Hiskett gave to petitioner  
did reveal material facts relevant to petitioner's criminal case  
the issue before the Court in this Post-Conviction Petition.  
Petitioner will provide copies of each item of evidence that  
was found inside the envelope that Cpl. Hiskett gave to petitioner.  
Petitioner further asserts that these documents categorically  
confirm, with signatures and dates, that Idaho Department of  
Correction employees did conspire with a United States attorney  
Marc Haws to illegally monitor and confiscate petitioner's mail  
and legal-mail. [Marc Haws was at one time a deputy attorney  
general with the Idaho Attorney General's Office and the special  
prosecutor that represented the State of Idaho at petitioner's  
trial.



(Continued from paragraph no. 7 on page no. 2):

Petitioner brings this action before the Court based upon new developments concerning the illegal suppression and nondisclosure of material facts and evidence he had a Constitutional Right to present at trial.

The substantial facts forming the basis of petitioner's claim is predicated upon an abuse of process by the State.

Evidence petitioner needed to prove his innocence was by design manipulated away, as described by former Jerome County Sheriff Larry Gold, and has been unavailable until now.

Petitioner's Exhibits; attached hereto, indicate a fundamental obstruction, whether willful or inadvertent, to petitioner's ability to defend himself.

Petitioner contends that:

A) Evidence he had a constitutional right to to produce at trial was without adjudication suppressed by the State, And;

B) The State had a duty to produce that evidence, And;

C) That had this evidence been disclosed there is **reasonable probability** that the outcome of petitioner's trial would have been different.

Petitioner further asserts that two key witnesses: Randy J. Stoker who was petitioner's trial counsel, (assigned just a few weeks prior to his trial), has written petitioner a letter

Page 1 attachement:

Petition for Post-Conviction Relief:

directing petitioner to subpoena him to testify about factual information that he can provide the Court in regards to the issues now before the Court. (Please see a copy of the letter that Randy J. Stoker sent to petitioner attached for review).

Petitioner also provides, for review by the Court, a copy of an inmate concern form which petitioner addressed to Cpl. Hiskett concerning the envelope and the documents it contained. (Please see a copy of this document attached hereto).

Petitioner further asserts that Cpl. Hiskett did inform petitioner that Warden T. Carlin at (ICIO) did in fact order him to write up an Incident Report concerning his discovery of the envelope that contained petitioner's legal documents and the documents generated and signed and dated by Lt. William Unger and A. Dewayne Shedd, who again, to remind the Court, A. Dewayne Shedd was at one time the staff paralegal at (ICIO).

Petitioner asks the Court to issue Subpoenas ordering Cpl. Mike Hiskett and, Randy J. Stoker, to appear and testify about their personal and factual knowledge regarding petitioner's allegations presented herein. Under the "interest of justice" catchall

Page 2 attachment:  
Petition For post-Conviction Relief:

(Continued from paragraph no. 9 on page 3):

...only a cursory investigation by petitioner's attorney. He failed in this regard. (Please see Petitioner's Exhibit-A, and Exhibit-C.) Exhibit-A is a letter that petitioner recently received from Randy J. Stoker, who was his trial counsel and, Exhibit-C is Justice Bisline's dissent available at 116 Idaho 129 @ 162.

Petitioner asserts that the State can not claim a time bar defense because petitioner's claims if proven would establish innocence and because their agents did illegally conspire to confiscate petitioner's legal mail which violated his constitutional rights.

Petitioner reserves the right to amend this petition.

Page 3 attachment:  
Petition For Post-Conviction Relief:

Lieutenant William Unger at (ICIO) and A. Dewayne Shedd, a one  
time staff paralegal at (ICIO), provide explicit information  
proving their personal involvement in this illicit conspiracy.

Further your affiant sayeth not.

Jaimi Dean Charboneau

Signature of Affiant

Jaimi Dean Charboneau

SUBSCRIBED AND SWORN AND AFFIRMED TO before me this 2 day of

June, 2011.



Andrea L. Blades

Notary Public for Idaho

My Commission Expires: 03/04/2016.

TABLE OF CASES AND AUTHORITIES

CASES:

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CASES:

## TABLE OF EXHIBITS

### EXHIBITS:

### DESCRIPTION:

|            |       |  |
|------------|-------|--|
| EXHIBIT- A | ----- | LETTER FROM RANDY J. STOKER.   |
| EXHIBIT- B | ----- | SWORN STATEMENT OF "MELVIN WRIGHT", FORMER JANITOR – JEROME COUNTY COURTHOUSE.   |
| EXHIBIT- C | ----- | JUSTICE BISTLINE'S DISSENT<br>AVAILABLE AT 116 IDAHO, 129 & 162  |
| EXHIBIT- D | ----- | INMATE CONCERN FORM, DATED 3/19/11<br>ADDRESSING IDOC CORPORAL MIKE HISKETT CONCERNING THE DISCOVERY<br>AND CONTENTS OF SEALED LARGE<br>WHITE ENVELOPE CONTAINING LEGAL<br>DOCUMENTS AND EVIDENCE. |
| EXHIBIT- E | ----- | COPY OF THE OUTSIDE OF THE SEALED<br>LARGE WHITE ENVELOPE DISCOVERED<br>BY CORPORAL MIKE HISHETT IN A FILE,<br>IN THE UNIT OFFICE, AT ICI-O, ON<br>MARCH 18, 2011.                                 |
| EXHIBIT- F | ----- | TWO E-MAIL CORRESPONDENCES'<br>BETWEEN A. DEWAYNE SHEDD AND<br>LIEUTENANT WILLIAM UNGER, DATED<br>11/14/2004 AND 11/15/2004.   |
| EXHIBIT- G | ----- | A. DEWAYNE SHEDD MEMO<br>PER TIM MCNEESE, DATED 6/27/03.   |
| EXHIBIT- H | ----- | LETTER FROM FORMER JEROME<br>COUNTY SHERIFF, LARRY GOLD, TO<br>JAIMI CHARBONEAU.   |
| EXHIBIT- I | ----- | SWORN STATEMENT OF FORMER<br>JEROME COUNTY SHERIFF LARRY<br>GOLD, DATED NOVEMBER 13, 2001.   |

TABLE OF EXHIBITS

EXHIBITS:

DESCRIPTION:

|                  |  |
|------------------|--|
| EXHIBIT- J ----- | WITNESS STATEMENT CONCERNING<br>JEROME COUNTY COURT CLERK,<br>CHERYL WATTS, INTERCEPTING A<br>LETTER FROM TIRA ARBAUGH TO JUDGE<br>BECKER.                                       |
| EXHIBIT- K ----- | POSTAL STAMPED ENVELOPE DATED<br>SEP. 7, 1989.   |
| EXHIBIT- L ----- | LETTER FROM TIRA ARBAUGH TO JUDGE<br>BECKER, DATED SEPTEMBER 6, 1989.  |
| EXHIBIT- M ----- | LETTER FROM JAIMI CHARBONEAU TO<br>ATTORNEY GOLDEN BENNETT DATED<br>AUGUST 13, 1984.   |
| EXHIBIT- N ----- | IDOC OFFENDER CONCERN FORM<br>ADDRESSING MR. D. SHEDD,<br>CONCERNING LEGAL MAIL FROM<br>ATTORNEY GREG J. FULLER AND<br>QUESTION ABOUT MARK HAWS<br>INTERFERENCE WITH LEGAL MAIL. |
| EXHIBIT- O ----- | ISCI INMATE CONCERN FORM TO<br>MS. DAVIS, CONCERNING LEGAL<br>PETITION ADVICE AND HER RESPONSE.  |
| EXHIBIT- P ----- | IDOC ACCESS TO COURTS REQUEST<br>DATED 06/17/01.   |
| EXHIBIT- Q ----- | ISCI RESOURCE CENTER<br>FORM(S)/PACKET(S) REQUEST DATED<br>06/18/01 AND IDOC ACCESS TO COURTS<br>REQUEST DATED 11/05/01.   |
| EXHIBIT- R ----- | COVER SHEET OF PETITION FOR WRIT OF<br>HABEAS CORPUS PETITION FOR<br>ORIGINAL JURISDICTION.  |
| EXHIBIT- S ----- | COPY OF IDOC ENVELOPE ADDRESSED<br>TO JAIMI CHARBONEAU, WITH NOTE<br>FROM LT. UNGER TO SHEDD.  |



TABLE OF EXHIBITS

EXHIBITS:

DESCRIPTION:

|            |       |  |
|------------|-------|--|
| EXHIBIT- T | ----- | LETTER FROM JAIMI D.<br>CHARBONEAU TO APPELLATE<br>ATTORNEY GREG SILVEY,<br>DATED, JANUARY 19, 2006.   |
| EXHIBIT- U | ----- | LETTER FROM JAIMI DEAN<br>CHARBONEAU TO IDAHO ATTORNEY<br>GENERAL.   |
| EXHIBIT- V | ----- | COPY OF ENVELOPE FROM U.S. COURTS<br>TO JAIMI D. CHARBONEAU.   |
| EXHIBIT- W | ----- | PERMISSION TO SEARCH<br>PROPERTY LETTER FROM FRANK K.<br>JUDD, PROPERTY MANAGER,<br>FARMLAND RESERVE, INC. (FORMERLY<br>KNOWN AS THE EL RANCHO 93<br>PROPERTY).  |
| EXHIBIT- X | ----- | FORMAL PROPOSAL TO<br>CONDUCT A GEOPHYSICAL<br>INVESTIGATION (SEARCH) OF<br>FARMLAND RESERVE, INC. PROPERTY,<br>(FORMERLY KNOWN AS EL RANCHO 93),<br>UTILIZING ELECTROMAGNETIC AND<br>GROUND PENETRATING RADAR SURVEY<br>EQUIPMENT . |

Jaimi Dean Charboneau, #22091  
ICI-O, C-2/A-1  
Hospital Drive North, #23  
Orofino, Idaho 83544

Dear Jaimi,

I received your letter of August 10, 2009 today. Let me respond.

You have asked that I "voluntarily" provide a statement about your case. I cannot ethically do this under my interpretation of the Judicial Canons of Ethics. As a sitting judge anything that appears to use the position of my office to influence anything is improper. By "volunteering" the requested information I believe that I violate that principle.

I told the investigator who called me that I would be glad to talk to him upon receipt of a signed waiver of attorney client privilege by you. I can be called as a witness in a case but only if subpoenaed. The fact that a motion for continuance was not filed in your case is a matter of public record and you don't need me to state that to a judge. I have no idea what my workload was before the trial and so am not in a position to make such an affirmative representation even if I thought that I could do so ethically (again without making this statement in a deposition or at hearing).

Certainly I care about right and wrong. I assume that you have another post conviction petition pending in front of Judge Elgee. I assume you have counsel in that case. May I suggest that you have him/her contact me so that we might discuss whether I have any facts within my knowledge that would help you? If you are asking me to offer an "expert opinion" concerning the "fairness" of your trial, I cannot provide that given my current job. Also, please remember that I have not had access to any of your file for the past 26 years. Although I have a clear memory of some issues in your case I certainly don't have a clear recollection of all of them, let alone factual disputes.

If you do not have counsel please have your investigator contact me after you have given him a signed release.

Thank you.

  
Randy J. Stoker

**Sworn Statement**

**Melvin Wright**  
**409 5<sup>th</sup> Street NE**  
**Barnesville MN 56512**  
**218-354-7212**

I, Melvin Wright was employed at the Jerome County Court House, and in the course of my duties as custodian of the Jerome County Court house, had on many occasions gone to the roof of the court house through the attic, and sometime between 1992-1993, I recall a brown paper bag to which I had seen on several occasions and thought that it was just garbage. I finally retrieved the brown paper bag from within the crawl space of the attic and found a gun hidden inside the paper bag. I immediately took the bag containing a gun to Mario Dalry, my supervisor, and we took the gun to the County Commissioners, who then called the Sheriff, and Under-Sheriff, and the prosecutor. I explained where the gun was found and I was then excused from the meeting with the above named people. I am willing, to cooperate about this factual knowledge of this particular issue.

Melvin Wright      11-11-08

Melvin Wright

date

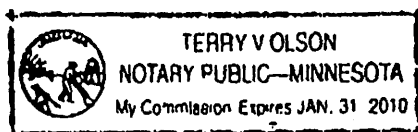
SUBSCRIBED AND SWORN To before me this 11 day of Nov. 2008

Terry V. Olson

Notary Public for \_\_\_\_\_

Residing at: \_\_\_\_\_

My Commission Expires. \_\_\_\_\_



BISTLINE, J., dissenting.

On April 4, 1989, the Court issued its first opinion in this case. We affirmed the first degree murder conviction, but vacated the death sentence and remanded for resentencing.

Full development of the attendant facts and circumstances is available in the reported case, 116 Idaho 129, 132-34, 774 P.2d 299, 302-04 (1989). Highly unusual was Charboneau's selection of defense counsel, concerning which I wrote at 116 Idaho at 162, 774 P.2d at 332, laying out the highly singular fact that defense counsel predicated the defense which he would present upon the results of a seance which was conducted by a spiritualist. Defense counsel wholly succumbed to relying entirely on the hypothesis that Charboneau was not the real culprit, but the real culprit was a daughter of the deceased victim. Based on that belief, said defense counsel forewent making any of the ordinary preparations for presenting a defense. Even more damaging to Charboneau was defense counsel allowing him to be interrogated by prosecuting authorities.

The interested reader will become more fully informed by reading all of the *Charboneau* opinions. My purpose for so suggesting is to further my view that the actions of the defense counsel were not just inimicable to the best interests of Charboneau, but actually deprived Charboneau of a fair trial.

For that reason I was unable to sanction the death sentence and am therefore presently equally unable to see him imprisoned for the remainder of his life without receiving the benefit of a new trial, one which could not but be substantially more fair than the one to which he was submitted by the attorney who supposedly represented and defended him. In regard to that disaster, I am reminded of and fortified by a news item recently observed in a local newspaper. It was to the effect that a convicted murderer who had been sentenced to life imprisonment had been recently paroled. A full report of the facts of that affair, which was the same sort of factual background as *Charboneau*, is readily available in 62 Idaho 8, 107 Pac. 854 (1940). To my mind, for one defendant to be released on parole requires that others equally entitled be treated evenly. To which must be added, the 62 Idaho defendant at all times had the benefit of competent counsel, whereas the trial of Charboneau was facially farcical from its inception. It is my firm belief that the trial in *State v. Charboneau* should have been aborted abruptly the very minute that defense counsel

disclosed his reliance on the outcome of a seance.

It was within the province of the district court to declare a mistrial. To have done so would not have unduly delayed a second trial at which Charboneau would be represented by competent counsel well versed in defending a defendant charged with first degree murder. What did occur, however, was a classic tragedy. It is equally true, and fully conceded, that hindsight is just that and nothing more. Undoubtedly the trial court was caught short when defense counsel presented his highly unusual theory of a defense which was not a defense. The district judge who presided at the trial is an extremely capable and fair-minded jurist; it can only be surmised that as is so with most trial court judges, he was not inclined to interfere with the defense counsel's mystical theory for defending a first degree murder charge.

EXHIBIT- C

3/21/11  
AFB

IDOC Offender Concern Form

Offender Name: Charboneau, Jaimi Dean IDOC Number: 22091  
Institution, Housing Unit, & Cell: IC1-0, C-2 / A-1 Date: 3-19-11

To: Officer Hiskett  
(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: Officer Hiskett on Friday March 18, 2011 while you were working the Charlie-2 unit you approached me in my cell at approximately 1:00 p.m. To inform me that you had found a large white envelope in amongst some other old paper work in the unit office. You told me that you had noticed that my name and inmate number was written on the large envelope that you found. This sealed envelope had the phrase "legal documents" written on it and the signature of A. Dewayne Shedd was legible over the seal of the envelope. continued...  
(Description of the issue must be written only on the lines provided above.)

Offender signature: Jaimi Dean Charboneau page (1) of (4)

Staff Section

Staff signature: [Signature] Associate ID #: 9898  
(Staff member acknowledging receipt)

Reply: yes I did find a white envelope on  
Friday the 18th of March @ 1300 hrs and brought it to you  
[Signature] 1255 3-21-11  
Responding staff signature Associate ID # Date

Distribution: Pink part returned to offender after receiving staff's signature. Original (white) and yellow forwarded to appropriate responding staff.  
Appropriate responding staff will complete reply field and return yellow part to offender.

PRT3NCROCF

EXHIBIT- D

**IDOC Offender Concern Form**

Offender Name: Charboneau Jaimi Dean IDOC Number: 22091

Institution, Housing Unit, & Cell: IC1-0, C-2 / A-1 Date: 3-19-11

To: Officer Hiskett  
(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: When you brought this envelope to me I thought that you were delivering legal mail to me that had just arrived for me however, you explained that it was not legal mail just an envelope with my name on it. While in your presence I looked inside the large white envelope and found several legal type documents inside and they all related to me. There was also a hand written note signed by "A. Dewayne Shedd" and another hand written note that was attached to a copy of a small envelope that had a postage stamp and a post office cancellation mark visible on it. Continued...  
(Description of the issue must be written only on the lines provided above.)

Offender signature: Jaimi Dean Charboneau

Page (2) of (4)

**Staff Section**

Staff signature: A. P. [Signature] Associate ID #: 9892  
(Staff member acknowledging receipt)

Reply: \_\_\_\_\_

Responding staff signature \_\_\_\_\_ Associate ID # \_\_\_\_\_ Date \_\_\_\_\_

Distribution: Pink part returned to offender after receiving staff's signature. Original(white) and yellow forwarded to appropriate responding staff.  
 Appropriate responding staff will complete reply field and return yellow part to offender.

PRT3NCROCF

# IDOC Offender Concern Form

Offender Name: Charboneau Jaimi Dean

IDOC Number: 22091

Institution, Housing Unit, & Cell: IC1-0, C-2/A-1

Date: 3-19-11

To: Officer Hiskett

(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: I pointed out the fact to you that the "send to" address on the small envelope had the name "Philip Becker" on it and I told you that I had recognized his name because he was my trial judge. There was also another small envelope inside the large envelope which had the following written on it. (in red ink was: "B-28 Forward to IC10 Legal Docs 12-5-02" in purple ink was: "I amate Charboneau 22091 U9 B 28 A"). This small envelope was sealed and written across the seal was: (Received 01-06-03 A. Dewayne Shedd). Officer Hiskett, in the event that I may need to verify this information at some point in the future

(Description of the issue must be written only on the lines provided above.)

Continued...

Offender signature: Jaimi Dean Charboneau

Page (3) of (4)

## Staff Section

Staff signature: [Signature]

(Staff member acknowledging receipt)

Associate ID #: 9898

Reply: \_\_\_\_\_

Responding staff signature

Associate ID #

Date

Distribution: Pink part returned to offender after receiving staff's signature. Original(white) and yellow forwarded to appropriate responding staff. Appropriate responding staff will complete reply field and return yellow part to offender.

PRT3NCROCF

EXHIBIT- D

41 of 956



# IDOC Offender Concern Form

Offender Name: Charboneau Jaimi Dean IDOC Number: 22091  
 Institution, Housing Unit, & Cell: 1C1-6, C-2 / A-1 Date: 3-19-11

To: Officer Hiskett  
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: Concerning that large white envelope and its contents that you found in the unit office on Charlie-2 will you please confirm that you did in fact find that large white envelope in the unit office on Charlie-2 as I have described here. Thank you very much for your time, I truly appreciate your honesty and integrity.  
The end.

(Description of the issue must be written only on the lines provided above.)

Offender signature: Jaimi Dean Charboneau Page (4) of (4)

## Staff Section

Staff signature: A. J. [Signature] Associate ID #: 9898  
 (Staff member acknowledging receipt)

Reply: yes I did find a white envelope on Friday 3/18/11 of mail and then gave it to you. at 1300 hrs

Responding staff signature: [Signature] Associate ID #: 4283 Date: 3-21-11

Distribution: Pink part returned to offender after receiving staff's signature. Original(white) and yellow forwarded to appropriate responding staff.  
 Appropriate responding staff will complete reply field and return yellow part to offender.

PRT3NCROCF

DEPARTMENT OF CORREC<sup>1</sup>.  
P.O. Box 83720  
Boise, ID 83720-0018

Shield, scan  
this and then take  
care of it.  
W. Unger

Charbonneau 22091

1SCI

V-9.

Forward to IC10

**From:** Shedd, A. Dewyne/paralegal  
**To:** Unger, William/LT.  
**Date:** 11/14/2004 08:47  
**Subject:** Re: Offender Charboneau, Jamie Dean #22091  
Location: ICI-O)/C-2-bunk, B5

LT. Unger, offender Charboneau #22091 currently has an active appeal in Federal Court. I also have a ('filed-copy dated Nov. 6, 2001' of a petition for writ of Habeas Corpus Petition for original Jurisdiction), 'In the Supreme Court of the state of Idaho', on Charboneau. FYI, when I spoke with Marc Haws last week he said, 'don't worry I've got your backs covered'. He did ask me to relay to you that we should keep this 'Charboneau mission' between the three of us and just carry it out as if it was any normal random check of an inmate's mail/legal mail. Thanks, Shedd

>>> William Unger LT. 11/13/2004 20:32 >>>

Dewayne, I have reviewed this letter you gave me last week. The one that you told me you had removed from an envelope that was mailed to inmate Charboneau, #22091. The name of the person that wrote this letter does appear to be the name that Mark Haws asked us to look out for. Dewayne, I'm not sure that we should be getting involved in this thing. I don't know about you but I damn sure don't want my name to get caught up in an investigation.

Charboneau by himself does not concern me, he is just an inmate. My concern is that this letter was mailed to Charboneau and received at this facility from a man named Larry Gold.

I did a little background research on Larry Gold and I found out that he was at one time the Sheriff in Jerome, Idaho. I also found out he was in law enforcement in California prior that. I don't know the connection between this Larry Gold and Charboneau Dewayne, but something tells me that if Gold went to all the trouble to send this letter to Charboneau, it doesn't make sense to me that he would be in with this Federal Prosecutor Mark Haws who's got us looking through Charboneau's legal mail for the same letter that Gold mailed to Charboneau.

As far as I'm concerned Charboneau has no legal rights and I'm game for anything to help this Federal Prosecutor but let's be careful Dewayne.

Let me know what Haw's says. If he will back us I have no problems with confiscating Charoneau's legal mail. Dewayne, when you speak to Haws again, ask him where Charboneau's current legal actions are? Does he have mail coming from both Federal and State Courts?

Thanks, LT. Unger

**From:** Shedd, A. Dewyne/paralegal  
**To:** Unger, William/LT.  
**Date:** 11/15/2004 09:26  
**Subject:** Re: Offender Charboneau, Jamie Dean #22091  
Location: ICI-O/C-2-bunk, B5

LT. Unger, have notified Marc Haws about the documents founding offender Charboneau's mail. I will also shred and delete all old messages.

>>> William Unger LT. 11/14/204 17:22 >>>

Shedd, I agree these documents from Larry Gold do appear to be items that will be of particular interest to Mr. Haws.

I see that name Tira Arbaugh is mentioned again in this affidavit that Larry Gold mailed to Charboneau.

Dewayne, don't forget to do like Haws suggested and make up a list of these documents and attach it to a log sheet in the mailroom indicating that Charboneau sighed them.

Thanks LT. Unger



---

Jaimi D. Charboneau  
Inmate # 22091 Housing Unit #9  
I.S.C.I.  
Boise, Idaho 83707

June 3, 2001

Dear Jaimi;

Please don't consider my late response to your letter, as a lack of caring or that it was such a low priority that I just got around to it. In fact the circumstance was just the opposite. I have thought of you often during the past many years and your letter woke up new memories and feelings. I am not going to take the approach of "get on with your life" like I read in the letter you enclosed, because that's not what I want to say or how I am feeling.

I trusted you and that did not come easy for me. I knew how you would act in nearly every situation because you are a man of pride. You were young when a terrible string of events took place in your life. Some of those events were your responsibility and you have taken responsibility for them, but then "pieces seem to have been added" which you were not responsible for and "events" that you could have no control over. I believe that these are a source of your inner anger, which is completely understandable. Anger is a normal human emotion. If it were not for the "righteous anger" of a group of wonderful men in Boston who had a "Tea Party" during the late 1700's, we may not be a "Free Nation" today. What you do with your anger can be constructive or destructive. The choice is yours — and yours alone.

I believe that some of the events during your trial caused fear, prejudice and the need for revenge. Multiple persons emerged in need of an event that could transform "some very ordinary people in ordinary jobs" on a journey of personal ego development, which served to feed a hunger for power that became obsessive.

The most disgusting issues were the apparent acts of a few people that "appeared to conspire" to punish a person far beyond the limits of the law, because the law "if fully enforced" may have required a "Guilty Man" to go free. How could this sleepy little town not be "easily self convinced" to "stretch or even manipulate the facts" to arrange for a finding of guilt without sufficient admissible evidence, even if the chain of evidence needed a little repairing here and there, behind the scenes.

Pg. 1 of 2

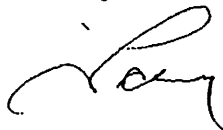
Pg. 2 of 2

There also appeared to be a "collaboration of minds" intelligent enough to controls the events of the time, but "little enough" to feel that they "had to collaborate" because the facts "may not have been strong enough", or "evidence that was collected under suspect conditions, dismissed because of contamination" and may have required manipulation by design. Jaimi, remember that this is just a personal hypothesis now. I have no proof of this in your case, just a deep down feeling that I am right because I have witnessed this "collaboration of minds" do the same thing in a different situation.

Jaimi, if you don't completely understand this letter, it's not you fault. I am not sure what I really want to say, other then it's good to hear from you! Please remember what I said, "It's your choice and your choice alone, what you do with your righteous anger. You can let it destroy you or be a source of strength. Stay is school, any school and keep reading and studying a wide variety of literature, both historic and current. Don't let your mind be dominated by any one thing, especially hate."

Hate can and will destroy nearly everyone. You are a bigger man then that.

Larry



Tuesday November 13, 2001

SWORN STATEMENT OF  
FORMER JEROME COUNTY SHERIFF  
LARRY GOLD

STATE OF IDAHO       )  
                              )  
                              ) SS  
COUNTY OF JEROME   )  
                              )

Comes now Larry Gold, I do SWEAR upon my oath and under penalty of perjury that the information and facts provided herein are true and correct to the best of my knowledge and belief:

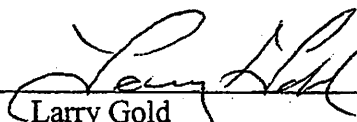
1. That I am a valid citizen of the State of Idaho, I am over the age of (18) eighteen years and competent to testify about the information I declare in this sworn statement.
2. That I was duly elected sheriff of Jerome County at the time of Jamie Charboneau's appeal and resentencing proceedings.
3. That "water-cooler" conversations were often held within my hearing concerning development of case evidence and the disposition of material facts with regard to pertinence or significance.
4. That as I stated in my June 3<sup>rd</sup> 2001 letter to Mr. Charboneau, I am aware of certain improprieties committed by the Jerome County prosecutors office and the special prosecutor from the Idaho Attorney General's office (Marc Haws) in preparing various cases for trial, and specifically Mr. Charboneau's case.
5. That it is my belief that contrary to my efforts and mandates, certain court and county officers often manipulated or affected the facts and evidence of cases to arrange for a finding of guilt.
6. That it is my belief that facts and evidence in the Charboneau case were purposely manipulated and altered to arrange for a verdict of guilty. A specific example of this came to my personal knowledge when in the fall of 1989, my chief deputy



Mito Alanzo confided in me his concern about the fact that the District Court clerk Cheryl Watts was in possession of a letter which had been delivered to the Jerome County Courthouse via The United States postal Service. Chief deputy Alanzo informed me that the letter at issue had been addressed to district court Judge Philip Becker and had been sent by Tira Arbaugh, the daughter of Marilyn Arbaugh. Chief Deputy Alanzo told me that the subject matter of this letter had significant relevance concerning the Charboneau case. Chief Deputy Alanzo stated that his concern was that the District Court Clerk Cheryl Watts had requested that he help her to destroy the letter.

7. That I did speak with Jerome County prosecutor John Horgan about the court clerk Cheryl Watts being in possession of the letter that Tira Arbaugh had mailed to Judge Becker, and the allegations made by Chief Deputy Alanzo that Cheryl Watts was conspiring to destroy the letter.
8. That I will be available to the Court for whatever assistance it requires to determine the effect of culpability of the aforementioned parties and the harms they may have caused to occur.

Dated this 13 day of November, 2001

  
\_\_\_\_\_  
Larry Gold  
Jerome County Sheriff, Ret.

Letter from Tina Arbaugh / daughter of Marilyn Arbaugh. Letter addressed to Judge Philip Becker.

Jerome County Courthouse.

Postal stamp on envelope indicates the letter was mailed from Bruneau Idaho on September 7, 1989. A.M.

This letter was given to Judge Becker's court clerk Cheryl Watts on 9-11-1989.

Writer witnessed Cheryl Watts open the envelope and read the letter enclosed.

Not wanting to challenge the court clerk on the legal question regarding the letter, writer elected to simply advise Cheryl Watts against shredding the letter, as that could potentially invite a federal investigation for destroying evidence because the letter was delivered from the U.S. Postal Service; a federal agency. A better way writer told Cheryl Watts was to simply lose the letter in a "ghost" file.

Writer later discussed this matter with Chief Deputy Mito Alanzo and his reply was, "I'm not surprised. Just another example of Jerome County's gunsmoke style justice, remember the Melvin Wright thing."

Don't B. 10/3/89  
51 of 956  
10/3/89

Tim M. Vaughn  
622 Highland Rd  
Jerome, Idaho  
83338



Mr. Philip Becker  
Jerome County Judge  
300 North Lincoln  
Jerome, Idaho  
83338

Dear Judge Becker,

Sir, I am writing this letter to you because I believe you should know the truth about some of the things that happened the day my mom died & the truth about some of the things that I was told to say & told not to say. I believe my mom would want me to tell the truth about these things. None of this is easy for me because I loved mom. She was my best friend & I feel lost & alone without her.

I am not sure if I am supposed to be writing you like this with you being in charge of the court proceedings with Jamel & my mom being shot & just that I keep having bad dreams about all of this & I can't talk to anyone about this even my sister. Everybody I know seems to be mad all the time. I know that they are all still very mad at Jamel & they all tell me I should only do & say what the prosecutor & Mr. Cern tell me to do. But I believe you should know that some of the things in my statements to the

police. were not all true.

On the day that this all happened I was pretty shook up because my mom had just been shot & because there were so many people asking me too many questions.

When I wrote out my statement on the day it happened I was told by an officer, I think his name is Driesal, to only say certain things so that my statement wasn't be confusing. I do not recall everything that I said in my statement that day but I do remember that officer Driesal told me to say certain things that were not really true. One thing I remember is when I wrote down the time that I woke up that morning. Officer Driesal told me to write down a specific time which I knew was not true because I did not know what time it was when I woke up. It has never been like me to look at the clock when I wake up. I just wrote down what officer Driesal told me to say.

Also I remember that Alf is the one who said something about the horses what I told



officer Oriesal is that after mom woke up that morning I remember her asking Jamie to go out & check on our horse that had been to the vet a few days earlier.

Before going outside I remember that Jamie tied a new white windrag around my neck & he kissed my forehead & he told me that the wrangle horse was waiting on me. Jamie would always tell me that when I would oversleep.

Before Jamie went outside to check on the horse mom came back to my bedroom & gave me a big box wrapped in decorative paper. When I opened the box it had a new 22 rifle in it. That was my graduation gift from mom & Jamie. After I told them thank you Jamie went outside & mom went into the bathroom to take a bath. After mom got dressed she told Tif & me that she was going outside to help Jamie with the horses.

I remember telling Officer Oriesal that when Tif & I first heard mom screaming I couldn't hear her wailings from Tif. At

that time I was still in the bath tub. It was just a few seconds later when we heard the gunshots. That's when Tippi came running in the bathroom & she screamed at me to get out of the tub & get my clothes on. When I had gotten dressed Tif grabbed my new .22 rifle that mom & Jamie had just given to me that morning. Tippi gave me one of mom's .25 pistols & then she took me outside with her. When we got outside I followed Tif over behind the sheep wagon which was right across the driveway from the barn. We could see mom in the alleyway by the feed cans but I did not see Jamie. I could only hear his voice. I remember I heard Tif shoot the rifle while we were behind the sheep wagon. I remember this because it startled me so much that I accidentally fired mom's pistol which also scared me. After that I asked Tif what was going on. That's when she told me mom had taken Calamity Jane with her when she went outside to help Jamie with the horses. Calamity Jane is what we call mom's cat.

moms 22 rifles when I told this to officer Driesal that day he told me he would make a note of it but he told me it wasn't necessary to state every little thing in my statement.

I also remember that when I finished my statement that day Officer Larry Welch came to see us at grandpas house a few days later when he told me that he needed to talk to me again because he said I had forgotten to write down some important things in my statement. Officer Webb told me that I had forgotten to put down the part about hearing more shots that day after Riffi & I had went back into the house. Officer Webb told me to write out another statement saying I had heard 6 or 8 more shots while Riffi & I were in the house changing our clothes. I remember I had to sign another statement when Officer Webb told me to write that down even though I knew it was not true.

One other thing that bothers me is something Mose Haws the new prosecutor from Boise had told us to do. Mr. Haws has told me



that we need to get rid of  
 mums Calamity Jane rifle. I don't  
 understand why he would want  
 us to do that but granpa & me  
 & uncle Jimmy we all went out  
 to the el rancho property last  
 week & we buried mums rifle  
 out there behind the potato  
 cellar where we used to feed the  
 horses. Uncle Jimmy wrapped  
 mums rifle in an old blanket  
 & buried it right behind the cellar  
 just a few feet from the place  
 where he had thrown some of  
 mums other things in the crawl  
 space at the back of the potato  
 cellar a few weeks after the day  
 my mom died.

That's the stuff we told  
 Duane Brown & officer David about  
 back then. Everybody told me not  
 to say anything about Uncle Jimmy  
 throwing those things away in the  
 crawl space. But Ma Beaker I know  
 that this is not right & I hope that  
 I am doing the right thing by  
 telling you these things.

Can you please call or write  
 to my granpa & talk to him  
 about this stuff? Because I know  
 he is a good man & if he is doing  
 anything bad in

because he is so mad at  
 Jamie for what happened to  
 my mom.

Lina Culbrough  
 Halmeah  
 September 6, 1989

Mr. Becker,

I am in Brunenau Idaho for  
 a cowboy benefit & street dance  
 where Pinto Bennetts band is providing  
 the music. Pinto Bennett knew my  
 mom & me & Alf for a long time  
 even since we lived at Smiths  
 Prairie. I talked with Pinto about  
 the things I have told you in  
 this letter & he is the one that  
 convinced me to write you.  
 Mr. Becker, I am 19 years old now  
 & I need to tell you the truth about  
 the things in this letter. If you  
 need to talk with me about these things  
 you can reach me at 224-4070. That's  
 my grandpas phone number. I will be  
 back in Jerome early next week.

My Aunt Margene, mom's sister can  
 also tell you about this stuff because  
 she was also there when Mr. Haus told  
 Uncle Jimmy & grandpa & all of us to  
 get rid of mom's will.



Idaho Charbonneau / Monday August 13, 1984  
 Jerome County Jail  
 300 North Lincoln  
 Jerome, Idaho 83338

M.A.

To, Mr. Bennett

CALAMITY JANE

Mr. Bennett,

Today when you and your secretary came here to the jail to see me you told me that you would read my letter that I had written. As Mr. Coakley asked me to write describing my version of the events that took place on the day of the incident, one thing that I forgot to say in my letter is that as one has told me if they have found Marilyn's 22 rifle the one that I had taken away from her, please ask Sheriff ELZA HALL if they found it.

This is a diagram of the emblem that is on the stock part of Marilyn's rifle. That's the 22 rifle that she brought back out to the tack room. That's the rifle that she tried to shoot me with. As I explained to you, when the police arrived at the scene I whistled to those sheriff's deputies to let them know where I was and I told them right then that the rifle I had was a few feet away on the ground by the fence. I had leaned the rifle up against the fence so I could use my hands to whistle. I told them that the rifle had fallen down by the fence.

Mr. Bennett, I don't recall if the rifle had Marilyn's initials or her name but I do remember that it has one of the other and Calamity Jane's.

Please check into this and also, will you please go and speak with the Oberman sisters? Valerie and Kim. Thank you. Love,

W. H. Viger's  
5/18/05

L. Unger  
5/4/05

IDAHO DEPARTMENT OF CORRECTION  
OFFENDER CONCERN FORM

Offender Name: Charboneau, Jaimi Dean

IDOC Number: 22091

Housing Unit: 1C1-0, C-2 / C-15

Date: 5-3-05

To: Mr. D. Shedd, staff paralegal

Issue/Concern: Mr. Shedd, will you please check the institutional legal mail log to encompass January of this year through April 29, and tell me if those records indicate that legal mail had been sent to me during that time frame from attorney "Greg J. Fuller".  
Mr. Shedd, do you know if a federal attorney named Marc Haws is attempting to interfere with my legal mail?  
Thank you for your assistance in this matter.

Jaimi Dean Charboneau  
Offender Signature

Reply: ~~These~~ The Requested Logs are kept in the Mail Room  
Suggest you contact Mail Room.

A. Williams  
Staff Signature

5/4/05  
Date

White - Return to Offender

Yellow - Retain for Institution Files

Pink - Retain by Offender

# ISCI Inmate Concern Form

Inmate Name Charbonneau Jaimi Dean

IDOC# 22091

Housing Unit & Cell ISCI, unit 9 / B-Tier

Date 6-17-01

TO Ms. Davis, staff paralegal / resource center

(Person most directly responsible for issue or concern)

Issue/concern Ms. Davis, I need your advise on how to get my criminal case back in court, I do not have an attorney and I am not sure what to do. Yesterday I showed you a letter which I recently received from a former Sheriff in the county where I was charged. I believe that this letter which I received from Sheriff Larry Gold may help to prove my innocence. Can you please tell me where and how I should go about filing a legal petition?  
Thank you very much for your time in this matter.

Jaimi Dean Charbonneau  
 Signature

Reply Mr. Charbonneau, see response on memo provided with legal books.

## Distribution:

- Both copies should be forwarded
- Yellow copy will be returned with response
- Inmate should record date sent for future reference

Ms. Davis

Signature

06 / 14 / 01

Date

6:11:25 AM

**ISCI Resource Center Check Out Memo** Unit: 9B

| <i>IDOC</i> | <i>Inmate</i> | <i>Title</i>                | <i>Checked Out</i> |
|-------------|---------------|-----------------------------|--------------------|
| 22091       |               |                             |                    |
|             | CHARBONEAU    | Idaho Court Rules Vol 2     | 05/18/2001         |
|             | CHARBONEAU    | Self-Help Litigation Manual | 05/18/2001         |
|             | CHARBONEAU    | Black's Law Dictionary      | 05/18/2001         |

Mr. Charboneau, regarding your question on how to file a petition in order to get your case filed before the proper court to prove your innocence.

It is my recommendation that you read section 19-4201 of the Idaho code; you should also read Article 1, section no. 5, and Article 5, section 9, of the Idaho Constitution.

If I was in your shoes I would file a petition with the Idaho Supreme Court and present to them a copy of the letter that you received from the Sheriff in your county and just ask that judicial body if that document presents a valid claim under the law.

You should also ask them to appoint you counsel. This would provide you the best opportunity to prove your innocence.

*MD*

06/15/01

**If you leave your unit prior to these books being returned or picked up (if your are in 8 or RDU), please leave them in the unit with the officer. Inmates in all other unit are required to return the books to the Resoruce Center.**

Approved By: \_\_\_\_\_

*MD*

Return By: \_\_\_\_\_

05/21/01

0800

return by date extended to 06/18/01 0800

*MD*

Date Rec'd 06/17/01 Appt. Date \_\_\_\_\_ Time \_\_\_\_\_ Record # \_\_\_\_\_

IDAHO DEPARTMENT OF CORRECTIONS  
ACCESS TO COURTS REQUEST

Name: Charboneau, Jaimi Dean IDOC #: 22091 Housing Assignment: 154, unit 89  
Date Requested: \_\_\_\_\_

TYPE OF ACTION: I need \_\_\_\_\_ Form \_\_\_\_\_ Packet X Talk to paralegal

|  |   |   |  |
|--|---|---|--|
| <input type="checkbox"/> Rule 35<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies  | <input type="checkbox"/> Appeal<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies  | <input type="checkbox"/> Child Support<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies     | <input type="checkbox"/> Credit for Time Served<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies |
| <input type="checkbox"/> Post Conviction<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies  | <input type="checkbox"/> Divorce<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies   | <input type="checkbox"/> Power of Attorney<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies |  |
| <input type="checkbox"/> Civil Rights<br><input type="checkbox"/> State<br><input type="checkbox"/> Federal<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies | <input type="checkbox"/> Habeas Corpus<br><input type="checkbox"/> State<br><input type="checkbox"/> Federal<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies | <input type="checkbox"/> Tort Claim<br><input type="checkbox"/> Photocopies<br><u>X</u> Books to Check Out            |  |

Filing deadlines/Court dates: I need to speak with the paralegal for legal assistance  
To get priority you must indicate the date/nature of any deadlines on every request. Proof of deadline required.

Briefly describe your issue: I spoke with you a few days ago concerning the letter that I recently received from the Sheriff in the county where I was charged. After having read this letter, which I allowed you to do, can you suggest any resource material that might help me to understand how I should proceed with an appropriate court action?

I do \_\_\_\_\_ do not X have an attorney in this action.

Thank you very much!

I acknowledge that the IDOC Paralegal whose assistance I seek is not an attorney. The Paralegal cannot give legal advice as to the intent or effect of any document. Any such advice should be sought from a licensed attorney.

Jaimi Dean Charboneau June 17, 2001  
Inmate Signature Date

DISAPPROVED \_\_\_\_\_ If disapproved, reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Paralegal

Date

ISCI  
RESOURCE CENTER

Date:

06/18/01

U-9

To:

Charbonneau

IDOC # 22091

Unit:

9

Subject:

- ☐ Rule 35; ☐ Credit for Time Served; ☐ Post Conviction; ☐ Ap.  
☐ State 1983; ☐ Federal 1983; ☒ State Habeas Corpus; ☐ Federal  
Habeas Corpus; ☐ Divorce; ☐ Child Support; ☒ Tort Claim;  
☐ Power of Attorney; ☐ Ada County In Forma Pauperis

You will find the requested form(s)/packet(s) attached. Please read. If you have questions after you have read the packet(s)/form(s) or need to make an appointment for a notary and copies, you may do so by submitting an access to courts request. Black pens are available through the commissary. If you are indigent you may get a black pen through the resource center. If you are in units 7 or 8 you may request a black pen from the unit staff. If you are filing in Ada County you need to specify this as they have their own In Forma Pauperis forms to be filled out.

Si usted no puede leer ingles y no hay alguien quien puede leer para usted, se puede pedir que el paralegal le ayuda con entender este paquete. Para pedir asistencia usa la forma "Access to Courts Request".



Date Rec'd 11/05/01 Appt. Date 11/06/01 Time 8:00 AM Record # \_\_\_\_\_

IDAHO DEPARTMENT OF CORRECTIONS  
ACCESS TO COURTS REQUEST

Name: Charboneau, Jaimi Dean IDOC #: 22091 Housing Assignment: 1SC1, unit 29  
Date Requested: \_\_\_\_\_

TYPE OF ACTION: I need \_\_\_\_\_ Form \_\_\_\_\_ Packet ☒ Talk to paralegal

|  |   |   |  |
|--|---|---|--|
| <input type="checkbox"/> Rule 35<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies  | <input type="checkbox"/> Appeal<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies  | <input type="checkbox"/> Child Support<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies     | <input type="checkbox"/> Credit for Time Served<br><input checked="" type="checkbox"/> Notary<br><input checked="" type="checkbox"/> Photocopies |
| <input type="checkbox"/> Post Conviction<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies  | <input type="checkbox"/> Divorce<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies   | <input type="checkbox"/> Power of Attorney<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies |  |
| <input type="checkbox"/> Civil Rights<br><input type="checkbox"/> State<br><input type="checkbox"/> Federal<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies | <input type="checkbox"/> Habeas Corpus<br><input type="checkbox"/> State<br><input type="checkbox"/> Federal<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies | <input type="checkbox"/> Tort Claim<br><input type="checkbox"/> Photocopies   |  |
|  |   | <input type="checkbox"/> Books to Check Out<br>_____<br>_____   |  |

Filing deadlines/Court dates: New Filing "original criminal case" need to file "A.S.A.P."  
To get priority you must indicate the date/nature of any deadlines on every request. Proof of deadline required.

Briefly describe your issue: Ms. Davis, it has been five months now since I received the letter from Sheriff Larry Gold on or about June 3 which I allowed you to read. During that time frame I have read and studied all of the resource materials that you suggested that I read to help me to understand how to file a petition with the courts. I am still pretty confused about what I should do however, I feel that I should bring this matter before the courts now and ask them for counsel as you have advised me to do. Will you please schedule me an appointment to file my petition. This will be a State Habeas Corpus petition. I'm not sure if I need a notary or not?  
I do \_\_\_\_\_ do not ☒ have an attorney in this action.

Thank you very much

I acknowledge that the IDOC Paralegal whose assistance I seek is not an attorney. The Paralegal cannot give legal advice as to the intent or effect of any document. Any such advice should be sought from a licensed attorney.

Jaimi Dean Charboneau Nov. 5, 2001  
Inmate Signature Date

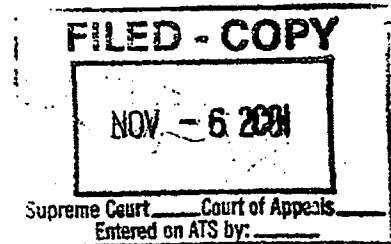
DISAPPROVED \_\_\_\_\_ If disapproved, reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Paralegal

Date

JAIMI D. CHARBONEAU # 22091  
ISCI - UNIT #9  
PO Box 14  
Boise, ID 83707

In Propria Persona



IN THE SUPREME COURT OF THE STATE OF IDAHO

JAIMI D. CHARBONEAU,

Petitioner,

-vs-

PAM SONNEN, WARDEN,  
I.S.C.I., ET.AL.,  
Respondent.

Case No. SP-OT-01-000

PETITION FOR  
WRIT OF HABEAS CORPUS  
PETITION FOR ORIGINAL  
JURISDICTION

Comes Now, Jaimi D. Charboneau, Petitioner in the above-entitled matter, and Invokes the Jurisdiction of the Court pursuant to Idaho Code §19-4201 ET, SEQ., Article 1 § 5 of the Idaho State Constitution, Idaho Code § 1-201, Idaho Appellate Rule #43, and the Fourteenth Amendment of the United States Constitution. Petitioner herein moves this Court for issuance of the Writ of Habeas Corpus due to his unlawful restraint and the violation of his Constitutionally protected right to due process and equal protection under the law.

This petition is further supported by Appendices and Memorandum Of Law attached hereto.

**PARTIES**

The petitioner is Jaimi D. Charboneau, # 22091, I.S.C.I. Unit #9, PO Box 14, Boise, Idaho 83707, who is presently incarcerated

DEPARTMENT OF CORRECTIONS  
P.O. Box 83720  
Boise, ID 83720-0018

Should scan take  
this and then  
care of it.  
L. Wagner

Charbonneau 22091  
1SCI  
V-9.  
Forward to ICIO

Jaimi Dean Charboneau, #22091  
ICI-O, C-2 / C-15  
Hospital Drive North, #23  
Orofino, Idaho 83544

Greg S. Silvey, Attorney  
P.O. Box 956  
Kuna, Idaho 83634

January 19, 2006

Subject: The Brief you filed in the Idaho Supreme Court dated:  
January 12, 2006, Docket No. 32120.

Dear Greg,

I am in receipt of the Brief that you recently filed in the Idaho Supreme Court on my behalf. First let me state that I appreciate the work product that you have produced in preparing my appeal. I do, however, need to address a couple of issues that I discovered while reading the brief.

The first issue is found on page no. 1, in paragraph no. 2, in sentence no. 6 and, no. 7, you stated as follows: " However, Mr. Charboneau asserted that while he had shot Marilyn in self defense with a .22 rifle..." Greg, I never stated that I had actually shot Marilyn. What I did say from day one is that after Marilyn had tried to shoot me, again, with the same .22 rifle that she had shot me with in a previous incident that occurred a few months earlier in Lincoln County. When she tried to shoot me with her .22 "Calamity-Jane" rifle on July 1, 1984, I had managed to get the rifle away from her when she tripped over our dog "Siggy", who had stepped in front of Marilyn as she was walking towards me with that rifle leveled at me. When I got the rifle away from Marilyn she started yelling for her daughter Tiffanie as she was running down the feedbin Alleyway. A few seconds later Marilyn was shooting at me again with one of her .22 pistols.

Letter to Greg Silvey: (1)

Marilyn owned lots of guns. She even had pet names for them.

After Marilyn had started shooting at me with the pistol I stepped behind a corner post which was the only thing between myself and Marilyn. I was prevented from going out the Northend Alleyway door because by that time I could see Tiffanie at the sheepwagon and I could see that she also had a gun. The sheepwagon was in a direct line from the feedbin Alleyway. Being shot at from both sides and with no way out I admitted that I fired the .22 rifle from my hip around the post. I did not aim the rifle at anyone. That .22 rifle, Marilyn's "Calamity-Jane" .22 rifle was the only gun that I touched or handled during that incident on July 1, 1984. Again, Greg, Marilyn was alive and speaking to me the last time that I seen her on that day.

I just thought that I should clear that up for you.

Greg, I am concerned about the fact that Judge Butler was never actually involved in my case and, he can only rely on the very complicated and confusing record could easily mislead anyone unless they had the benefit of being personally involved or gaining full insight from someone who was personally involved. To illustrate my point I direct your attention to page no. 19 of the brief you filed, in the last paragraph the first sentence quotes Judge Butler as follows: "The evidence at trial clearly indicated that Marilyn Arbaugh died from shots to the chest, and that bullets recovered from the victim were matched to the Remington Rifle, which the petitioner has admitted to firing." Greg, the only gun that I admitted to having handled on July 1, 1984, when Marilyn was shot, was her .22 rifle the same rifle that she had shot me with previously in Lincoln County. That .22 rifle had Marilyn's name or initials, I can't recall which, engraved above the inscription "Calamity-Jane". That was engraved in the wooden stock portion of that .22 rifle. Doesn't it stand to reason that if that rifle was this Remington Rifle that Judge Butler refers to from the records he has read which refer to a Remington Rifle that "Marc Haws" the trial prosecutor had presented as evidence

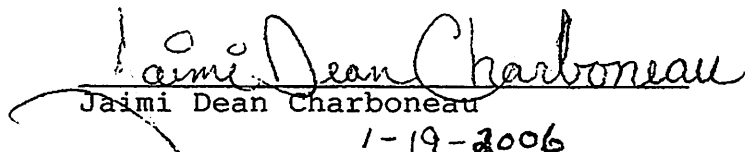
Letter to Greg Silvey: (2)

at my trial, wouldn't it stand to reason that they would have mentioned in their description of that rifle that it had Marilyn's name and "Calamity-Jane" engraved in the stock? Also, why didn't anyone allow me an opportunity to view this "Remington Rifle" so that I could have confirmed or denied whether or not it was the rifle that I had handled on July 1, 1984? If Judge Butler would have had further proceedings as the Idaho Supreme Court directed him to do when they reversed and remanded my case back to the District Court all these questions could have been answered.

Greg, with all the new information that is slowly coming to light in my case I now have to wonder whether the Rifle that I did admit to having handled on July 1, 1984 was ever processed in the proper chain of custody. Could that rifle also be hidden in the attic of the Jerome County Courthouse? I'm not sure if you are aware of what "Tira" had told mother a couple years after my trial when she was married to my brother "Jimmy". What "Tira" had told mother is that "Marc Haws" had told her to get rid of her mother's rifle. At the time that Marc Haws told that to "Tira" she was only thirteen years old. "Tira" told my mother that she burried the rifle somewhere at the El Rancho 93.

Before I close I want to express my sincere gratitude for all the hard work that you have done for me. It's good to have someone with integrity working for them. Thanks Greg.

Sincerely,

  
Jaimi Dean Charboneau  
1-19-2006

Letter to Greg Silvey: (3)

cc: file

EXHIBIT- T

71 of 956

From: Jaimi Dean Charboneau, #22091  
ICI-O, C-2 / C-21  
Hospital Drive, #23  
Orofino, Idaho 83544

To: Lawrence G. Wasden  
Idaho Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0101

Subject: Resource Center and Access To Courts

March 31, 2008

Dear Mr. Wasden,

On Friday March 28, 2008, I was in the resource center at ICI-O for the purpose of processing a Notice Of Appeal in response to an Order by the District Court in Jerome County dismissing a petition for post-conviction relief that I had filed in that Court.

According to the Court Rules I am required to file my Notice Of Appeal within a specified time frame, additionally, I am also require to serve a copy of my Notice Of Appeal on specific party's relevant to the action being filed.

When I tried to do these things so that my pleading would meet all the procedural requirements the staff person working in the resource center advised me that I could only make a certain amount of copies that she determined to be the proper number for the party's I was required to serve. In addition I was also informed by this resource center staff person as what my filing deadlines are. When I asked this resource center staff personnel if her legal advise would assure that my pleading would meet all the court's demands. She told me that her boss at the Idaho Attorney General's Office had instructed her to do things this way.

Letter to the Idaho Attorney General: -1-

EXHIBIT- U

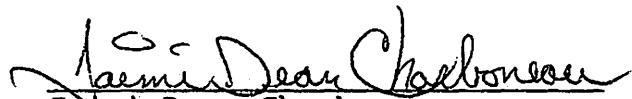
Mr. Wasden, my only interest as I pursue access to the court's through the only means available to me; that means for Idaho inmates being what is defined as the " resource center ", is to file my pleadings with the courts in a manner that will be proper from a procedural stand point, i.e. within the court rules defining timeliness and, all other procedural regulations such as the proper number of copies and any and all other legal requirements that may well prove to have a legal determination on the outcome of my pleading.

This very thing has happened to me on other occasions when I have attempted to present my legal issues to the courts and your agents in charge of the " resource center " have obstructed my ability to process my pleadings and/or they have given me erroneous legal advise that had an adverse affect on that pleading.

Please tell me in writing if your instructions to those persons who are in charge of the " resource center " are known by and accepted by the Idaho Courts?

Thank you for your time in this matter.

Sincerely,

  
Jaimi Dean Charboneau



UNITED STATES COURTS  
DISTRICT OF IDAHO  
550 W Fort St MSC 039  
Boise ID 83724

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE \$300



POSTAGE AND FEES PAID  
UNITED STATES COURTS  
USC 426

9

Jaimi D. Charboneau  
ISCI / Unit #7 - #22091  
P.O. Box 14  
Boise, ID 83707

83707-0014



**Farmland Reserve, Inc.**

---

139 E. South Temple, Suite 600  
Salt Lake City, UT 84111-1103  
(801) 715-9195

July 6, 2010

Becki Champion  
9325 West Wright Street  
Boise, ID 83709

Re: Rifle Search Request

Ms. Champion:

We are in receipt of your letter dated June 16, 2010, regarding your request to conduct a search for a rifle reported to be buried on the property now owned by Farmland Reserve, Inc. The position of Farmland Reserve, Inc. with regards to requests to search the property has been and continues to be that we are not opposed to such searches as long as they are conducted under the direction of the Jerome County Sheriff's Office.

I trust this will help clarify the situation.

Sincerely,



Frank K. Judd  
Property Manager

Geophysical Survey LLC  
2200 W 8<sup>th</sup> Place  
Kennewick, WA 99336

June 6, 2011

Tom Bergstrom  
El Rancho 93  
Jerome, ID

**Re:                                      *Geophysical Investigation  
   El Rancho 93  
   Jerome, Idaho***

Dear Mr. Bergstrom:

Geophysical Survey LLC is pleased to offer this proposal for a geophysical investigation at El Rancho 93 in Jerome, Idaho. The survey area is the perimeter (extending out 20 feet) and interior portions of a 30 foot by 50 foot barn. The objective of the survey is to locate a .22 caliber rifle, approximately 3 feet long by 1 inch diameter. The rifle is inscribed or marked with the words Calamity Jane or Marilyn Arbaugh (initialed MA).

The survey area should be free of debris and sources of cultural interference (e.g. vehicles and farm implements).

## **TECHNICAL APPROACH**

### **Electromagnetic Survey**

An electromagnetic survey will be carried out utilizing a Geonics EM61MK2 HH (hand-held) metal detector. The EM61HH has a depth of investigation of approximately four feet. Data will be collected across the survey area on two foot line spacing with data recorded at 0.62 foot intervals. Location control will be established using a grid painted on the ground.

### **Ground Penetrating Radar Survey**

A ground penetrating radar survey (GPR) will be conducted using a GSSI SIR3000 control unit and a 900 MHz antenna. The 900 MHz antenna has a depth of investigation of approximately 4 feet. GPR data will be collected over the area on two foot line spacing in two orthogonal directions with data recorded at 12 scans per foot. Location control will be established using a grid painted on the ground.

### **Mapping Control**

A surveyors tape will be used to establish a two foot by two foot grid with fiducial marks painted on the ground. Grid corners will be staked.

### **Data Processing**

EM data will be contoured using Surfer by Golden Software. GPR data will be processed using Radan I3D by GSSI.

### **Report**

A report summarizing the geophysical methods used and survey results will be provided with contour maps of time domain electromagnetic data, radargrams of features of interest, and a site map detailing survey results.

### **COST PROPOSAL**

The cost of the proposed survey is \$2,650.00.

|                             |                  |
|-----------------------------|------------------|
| Mobilization/Demobilization | \$ 850.00        |
| Field Survey                | \$ 1,000.00      |
| Data processing & report    | <u>\$ 800.00</u> |
|                             | \$ 2,650.00      |

These costs include mobilization, demobilization, a geophysicist and a field technician, equipment, data processing and report.

Please feel free to contact me at your convenience if you need additional information or have any questions.

Respectfully,  
Geophysical Survey LLC

Mark Villa L.G.  
Geophysicist

Inmate name Jaimi Dean Charboneau  
IDOC No. 22091  
Address P.O. Box 14, C-64-A  
Boise, Idaho 83707

Petitioner / Prose

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
STATE OF IDAHO, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Case No. CV2011-638

**MOTION AND AFFIDAVIT IN  
SUPPORT FOR  
APPOINTMENT OF  
COUNSEL**

COMES NOW, Jaimi Dean Charboneau, Petitioner in the above  
entitled matter and moves this Honorable Court to grant Petitioner's Motion for Appointment of  
Counsel for the reasons more fully set forth herein and in the Affidavit in Support of Motion for  
Appointment of Counsel.

1. Petitioner is currently incarcerated within the Idaho Department of Corrections  
under the direct care, custody and control of Warden "Smith", (First name not known),  
of the Idaho State Correctional Institution -- (ISCI)

2. The issues to be presented in this case may become to complex for the Petitioner  
to properly pursue. Petitioner lacks the knowledge and skill needed to represent him/herself.

3. Petitioner/Respondent required assistance completing these pleadings, as he/she  
was unable to do it him/herself.

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 1

Revised: 10/13/05

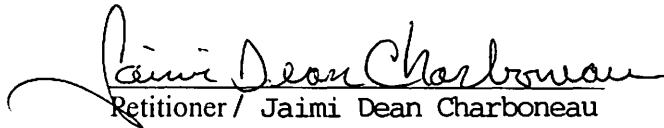
DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2011 JUN 15 AM 11 21

BY Michelle Emerson  
DEPUTY CLERK

4. Other: ( Please see attached ).

DATED this 2 day of June, 2011.

  
Petitioner / Jaimi Dean Charboneau

### AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO                    )  
  ) ss  
County of Ada                    )

Jaimi Dean Charboneau, after first being duly sworn upon his/her oath, deposes and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the Idaho State Correctional Institution under the care, custody and control of Warden "Smith";
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;
7. If I am forced to proceed without counsel being appointed I will be unfairly handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 2  
Revised: 10/13/05

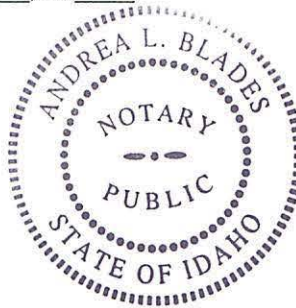
WHEREFORE, Petitioner respectfully prays that this Honorable Court issue  
it's Order granting Petitioner's Motion for Appointment of Counsel to represent his/her interest,  
or in the alternative grant any such relief to which it may appear the Petitioner is entitled to.

DATED This 2 day of June, 2011.

Jaimi Dean Charboneau  
Petitioner / Jaimi DEan Charboneau

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 2 day  
of June, 2011.

(SEAL)



Andrea L Blades  
Notary Public for Idaho  
Commission expires: 03/04/2016.

CERTIFICATE OF MAILING

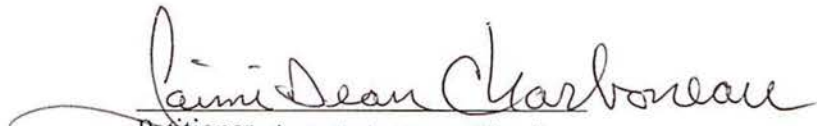
I HEREBY CERTIFY that on the 2 day of June, 2011, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

Jerome County Prosecuting Attorney

300 North Lincoln

Room 307

Jerome, Idaho 83338

  
Petitioner / Jaimi Dean Charboneau



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU, )

Plaintiff, )

vs. )

STATE OF IDAHO, )

Defendants. )

Case No. CV 2011-638

DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
JEROME COUNTY IDAHO

2011 JUN 15 PM 12 5

Michelle Emerson  
CLERK

BY  DEPUTY CLERK

---

**ORDER OF DISQUALIFICATION**

---

COMES NOW the Honorable John K. Butler, District Judge, deeming himself disqualified in the above-entitled cause and requests this matter be re-assigned to another District Judge for all further proceedings.

DATED: 6/15/2011

SIGNED: 

JOHN K. BUTLER  
District Judge

CERTIFICATE OF MAILING


I, the undersigned, hereby certify that on the 15<sup>th</sup> day of June, 2011, a true and correct copy of the foregoing Order of Disqualification was mailed, postage paid, by U.S. mail/hand delivered to the following persons.

Jerome County Prosecutor  
233 West Main  
Jerome, ID 83338  
(hand-delivered)

Jaimi Dean Charboneau #22091  
P.O. Box 14  
Boise, ID 83707  
(mailed)

Linda Wright  
P.O. Box 126  
Twin Falls, ID 83303-0126  
(faxed)

By

  
\_\_\_\_\_  
Deputy Clerk

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2011 JUN 15 PM 3 44  
Michelle Emerson  
BY Michelle Emerson  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

**JAIMI DEAN CHARBONEAU,**

Plaintiff,

vs.

**STATE OF IDAHO,**

Defendant.


**CASE NO. CV 2011-638**

**ORDER OF ASSIGNMENT**

IT IS HEREBY ORDERED that the above-entitled case be assigned to

Honorable Robert J. Elgee for all further proceedings.

DATED this 15<sup>th</sup> day of June, 2011.

  
G. Richard Bevan  
Administrative Judge  
Fifth Judicial District

c: Judge Elgee  
Jerome Pros  
Charboneau

ORDER OF ASSIGNMENT

Inmate name Jaimi Dean Charboneau  
IDOC No. 22091  
Address P.O. Box 14  
Boise, Idaho 83707

2011 JUN 22 PM 4 53

BY Michelle Emerson  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU, )  
Petitioner, )  
vs. )  
STATE OF IDAHO, )  
Respondent. )

Case No. CV2011-638

**ORDER GRANTING  
MOTION FOR  
APPOINTMENT  
OF COUNSEL**

IT IS HEARBY ORDERED that the Petitioner's Motion for Appointment of Counsel is granted and Brian Tanner (attorney's name), a duly licensed attorney in the State of Idaho, is hereby appointed to represent said defendant in all proceedings involving the post conviction petition.

DATED this 22 day of June, 2011.

Robt Egan  
District Judge



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME  
DISTRICT DIVISION

\*\*\*\*\*

2011 JUL 1 PM 12 11

Michelle Emerson  
CLERK

DEPUTY CLERK

JAIMI DEAN CHARBONEAU,  
Plaintiff,

CASE NO. CV 2011-638

vs.

**NOTIFICATION OF APPOINTMENT**

STATE OF IDAHO,  
Defendant,

**TO: BRIAN TANNER:**

**YOU ARE HEREBY NOTIFIED** that you have been appointed to represent the above-named Defendant by reason of conflict of interest with the current Jerome County Public Defender.

A Public Defender Packet is enclosed.

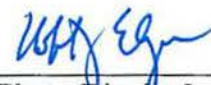
You will be compensated at the rate of \$65.00 per hour plus expenses incurred by Jerome County.

Please keep an itemization of time and expenses incurred on this case for submission with claim.

**A copy of this Notification of Appointment must be attached to each separate itemized billing presented to the county for payment. Failure to attach this Notification may delay the processing of your claim.**

Defendant needs interpreter Yes: \_\_\_\_\_ No: **XX**

DATED this 29 day of June, 20 11.

  
Robert Elgee, District Judge



COPIES:  
Brian Tanner  
Jaime Cahroncau



2011 JUL 1 PM 12 11

Michelle Emerson

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR JEROME COUNTY**

JAMI DEAN CHARBONEAU,

Petitioner,

VS.

STATE OF IDAHO,

Respondent.

Case No.: CV-2011-638

NOTICE OF COURT'S INTENT TO  
DISMISS PURSUANT TO I.C. § 19-4906

Charboneau filed a Petition for Post-Conviction Relief on June 15, 2011. Taking his own allegations at face value, he was sentenced almost 20 years ago, in October 1991, to a fixed life term following a conviction for first degree murder.

Charboneau filed a direct appeal from his original conviction. The Idaho Supreme Court affirmed his conviction but vacated the death sentence and remanded for resentencing. *State v. Charboneau*, 116 Idaho 129, 774 P.2d 299 (1989). He alleged ineffective assistance of counsel on his original appeal. Following resentencing, he again appealed, and the sentence was affirmed. *State v. Charboneau*, 124 Idaho 497, 861 P.2d 67 (1993). Even though the first direct appeal mentions a petition for post-conviction relief, many more have followed. *See*, 140 Idaho 789, 102 P.3d 1108 (2004) and 144 Idaho 900, 174 P.3d 870 (2007). This last citation noted that this was Charboneau's 3<sup>rd</sup> petition for post-conviction relief, and it was untimely then. Thus, Charboneau has had ample opportunity to raise, and has in fact raised, all the allegations he

could possibly raise by both direct appeal and petition for post-conviction relief, including claims of ineffective assistance of counsel. Generally, subject to some exceptions, one seeking post-conviction relief is entitled to one petition. I.C. § 19-4908. This is *at least* Charboneau's fourth (4<sup>th</sup>) such claim.

There are seven (7) available claims for post-conviction relief under I.C. § 19-4901. Unless Charboneau fits within the statutory criteria, his latest petition fails to state a claim, and is subject to summary dismissal. Although he admits in the most recent petition that he is "barred by the doctrine of *res judicata* from litigating an assertion of ineffective assistance of defense counsel," he attempts to do just that, claiming "overt incompetence by defense representation throughout his lengthy trial and appeal history." Unless there is a basis for some new claim under § 19-4901, supported by facts rather than Charboneau's conclusions, this assertion is subject to summary dismissal. Charboneau also continues to claim factual innocence. This claim was addressed long ago and rejected.

Now, it *appears* that he is attempting to set forth claims that assert, in general:

- (1) That he was fairly recently brought a large envelope containing several legal documents relevant to his case from a correctional officer who served or serves at the Idaho State Correctional Institution in Orofino. Some of those documents were attached to this most recent post-conviction claim.
- (2) Based on these documents, Charboneau has reason to believe that a prior assertion he has made—that Idaho Dept. of Correction employees conspired with U.S. Attorney Marc Haws to illegally monitor and confiscate his mail and legal mail—is true. Haws allegedly represented the State of Idaho in earlier legal proceedings. Charboneau *concludes* that by virtue of the information found in this envelope, there has been "illegal suppression and non-disclosure of material facts and evidence he had a right to present at trial." Based on what he has found in this envelope, (the envelope's contents appear to be a recent discovery) Charboneau also asserts that the State cannot "claim a time bar defense because petitioner's claims if proven would establish innocence and because their agents did conspire to confiscate petitioner's legal mail which violated his constitutional rights."

At best, Charboneau's petition alleges that someone read or confiscated his mail after he was in prison. There is no assertion that any of the information contained in the envelope is new or was unknown to Charboneau previously, or that any information was used by the prosecution to undercut or hamper his defense, or withheld from him. What is asserted is Charboneau's *conclusion* that if someone conspired to read his mail after he was sentenced to prison, that would somehow establish factual innocence, or entitle him to some relief from this court pursuant to the post-conviction relief act. The court declines to accept that conclusion. What is also missing from Charboneau's petition is any logical claim or suggestion that even if all the information attached to his petition was utterly unknown to him until now, how any of that would matter.<sup>1</sup>

The Court has appointed Charboneau counsel in order to see if a proper claim can be made under I.C. § 19-4906 and the other relevant post-conviction statutes. As it is presently pled, this claim is subject to dismissal for failure to state a claim. Mr. Charboneau has already made multiple post-conviction claims. The court has no intention of paying an attorney from county funds in order to pursue Mr. Charboneau's claims "one more time." Charboneau's claims have all been fully aired and thoroughly examined. **Counsel is not to be drawn into presenting Mr. Charboneau's case all over again and need not and shall not review the entire record of proceedings in order to familiarize himself with Charboneau's case and its history. The Court will disallow any claimed attorney fees not directed to the precise issue at hand or that are incurred in any attempt to broaden currently framed issues.** *If necessary*, the Court

---

<sup>1</sup> For example, there is a sworn statement from Larry Gold, suggesting that he was "aware of certain improprieties committed by the Jerome County Prosecutor's Office and the special prosecutor from the Idaho Attorney General's office (Marc Haws) in preparing various cases for trial, and specifically Mr. Charboneau's case." That affidavit is dated in November of 2001. Mr. Gold fails to state any improprieties he claims to be aware of, aside from a letter from Tira Arbaugh addressed to Judge Becker in 1989. It purports to relate to facts concerning Charboneau's case and the "missing rifle." However, also attached to Charboneau's recent petition is a copy of an ISCI Inmate Concern Form dated 6/17/2001, in which Charboneau references this letter and believes it may help to prove his innocence.

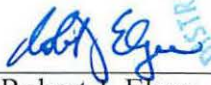



will provide funds for one visit to the penitentiary by counsel, and that is only if the Department of Corrections will not allow a phone consultation. Counsel will have to explain in any billing why such a trip is necessary and why communications through mail will not suffice.

The precise issue at hand is this: Pursuant to I.C. § 19-4906(b), a court is not permitted to summarily dismiss a claim for post-conviction relief, but must give an applicant 20 days in which to respond to the Court's intended dismissal. The Court is satisfied on the basis of the application and the record that Charboneau is not entitled to post-conviction relief and no purpose would be served by any further proceedings. The Court hereby gives notice that it intends to dismiss this action. Charboneau is given 20 days in which to respond. **Charboneau's counsel is directed to confine his activities to addressing the issues the court raised in this Notice to see if a claim can be properly pled based on facts, not conclusions, that might state a claim under the post-conviction statutes.** The court is not confident that is possible, and it appears Charboneau believes he can continue endlessly to barrage the courts with petitions. Although counsel is expected to do a workmanlike job to attempt to frame proper pleadings, they must specifically address and resolve the issues raised herein. If counsel needs time beyond the allotted 20 days the court will entertain a proper request, but the court does not expect this particular process to go on for long or become costly to Jerome County.

IT IS SO ORDERED.

Dated this 30 day of June, 2011

  
Robert J. Elgee  
District Judge



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of July, 2011, I caused to be served a true copy of the foregoing ORDER, document by the method indicated below, and addressed to each of the following:

Jami Dean Charboneau  
IDOC No. 22091  
P.O. Box 14, C-64-A  
Boise, ID 83707

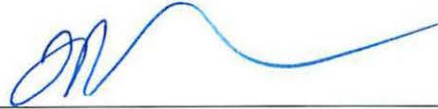
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ FAX

Jerome County Prosecuting Attorney  
300 North Lincoln, Room 307  
Jerome, ID 83338

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ FAX

Brian Tanner  
516 Hansen St. E  
Twin Falls, ID 83301

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ FAX



Deputy Clerk

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2011 JUL 13 PM 1 53

Michelle Emerson

BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO EXTEND TIME TO RESPOND  
TO COURT'S INTENT TO DISMISS  
PURSUANT TO I.C. § 19-4906

COMES NOW, the Petitioner, by and through counsel of record, and does hereby request additional time to respond to the Court's Notice of Intent to Dismiss Pursuant to I.C. § 19-4906.

In the Court's Notice of Intent to Dismiss, page 4, the Court states that, "If counsel needs time beyond the allotted 20 days the court will entertain a proper request, but the court does not expect this particular process to go on for long or become costly to Jerome County." The Court further states in bold, that "Charboneau's counsel is directed to confine his activities to addressing the issues the court raised in this Notice to see if a claim can be properly pled based on facts, not conclusions, that might state a claim under the post-conviction statutes."

The issue which the Court seeks to have addressed is whether Charboneau fits within the statutory criteria outlined in I.C. § 19-4901. Based on this statute, two claims may exist. The

MOTION TO EXTEND TIME TO RESPOND TO COURT'S INTENT TO DISMISS  
PURSUANT TO I.C. §19-4906 - 1

petitioner appears to be claiming that "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;" under subsection (4). Subsection (6) might also apply. This section states that a claim for post conviction may be presented if the petitioner is innocent of the offense subject to the provisions of section 19-4902, which relate to DNA evidence.

The Court further states that, "unless there is a basis for some new claim under I.C. § 19-4901, supported by facts rather than Charboneau's conclusions, his assertion is subject to summary dismissal." The Court further seeks to understand how any of the "new" evidence presented would "matter, " or make any difference in terms of demonstrating the innocence of the petitioner. In sum, the petitioner has not presented compelling evidence which proves his innocence, but merely conclusions and hearsay statements from various witnesses.

Counsel for the petitioner is aware of the Court's concerns in terms of funding an additional review of this case and has and will attempt to limit his time. However, based on an initial review, this case presents itself as extremely complicated. At a minimum, counsel requests an opportunity to understand the basic parts of this case so that he might understand what evidence matters and what evidence does not matter in terms of possibly demonstrating the petitioner's innocence.

The petitioner's friends and family have agreed to pay for counsel's travel expenses to Boise in order to offset the county's costs and it is the intent of counsel to visit with Mr. Charboneau. Counsel will attempt to make a good faith review of this case and will additionally attempt to make an expeditious and limited review as requested by the Court.


In order to understand and obtain additional information regarding this case, the Petitioner requests additional time to respond to the Court's Intent to Dismiss. With the

MOTION TO EXTEND TIME TO RESPOND TO COURT'S INTENT TO DISMISS  
PURSUANT TO I.C. §19-4906 - 2

additional time, counsel for Petitioner intends to 1) gain a further understanding of this case by speaking to Mr. Charboneau and Judge Stoker, 2) reviewing evidence submitted in the latest application for post conviction relief and deciding what evidence is necessary and compelling and whether or not this evidence exists. If this evidence does exist, the Petitioner seeks time to produce it.

For the following reasons, the Petitioner requests additional time to respond to the Court's Notice of Intent to Dismiss. It is frankly uncertain how much time is necessary. The Petitioner requests two months.

Respectfully Submitted This <sup>th</sup> 13 day of July, 2011.

  
Brian M. Tanner

7-13-11  
Date

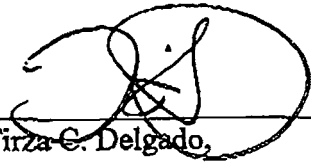
MOTION TO EXTEND TIME TO RESPOND TO COURT'S INTENT TO DISMISS  
PURSUANT TO I.C. §19-4906 - 3

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 13th day of July, 2011, I caused a true and correct copy of the foregoing MOTION TO EXTEND TIME TO RESPOND TO COURT'S INTENT TO DISMISS PURSUANT TO I.C. § 19-4906 to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary



Jaimi D. Charboneau, #22091  
ISCI – Unit 11, A-15-B  
P.O. Box 14  
Boise, Idaho 83707-0014

Petitioner / In Propria Persona

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2011 JUL 14 PM 1 26

*Michelle Emerson*

CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI D. CHARBONEAU, )  
Petitioner, )

-vs-

STATE OF IDAHO, )  
Respondent, )

CASE # CV2011-638

AFFIRMATION OF POWER OF  
ATTORNEY

1. This Affirmation of Power of Attorney is for the purpose of informing the Court that Bessie May Charboneau and Thomas E. Bergstrom have been granted legal authorization to act on behalf of Jaimi Dean Charboneau, (Grantor), and in his stead, to confer with attorneys, speak with witnesses, to send and receive legal mail and correspondence by U.S. Postal Service or any and all other means necessary, to file documentation with the Courts on his behalf and to do and perform any and all acts necessary or incident to the performance and execution of the power therein expressly granted, with the power to do and perform all acts authorized hereby, as fully and to all intents and purposes as the grantor might or could do if personally present and personally acting, with full power of substitution.

AFFIRMATION OF POWER OF ATTORNEY – 1

Dated this 6th day of July, 2011.

Bessie May Charboneau, Power of Attorney on behalf of and for Plaintiff / Petitioner

Bessie May Charboneau, Power of Attorney on behalf of and for Plaintiff / Petitioner  
P.O. Box 50311  
Boise, Idaho 83705  
(208)559-8727

Dated this 6th day of July, 2011.

Thomas E. Bergstrom, Power of Attorney on behalf of and for Plaintiff / Petitioner

Thomas E. Bergstrom, Power of Attorney on behalf of and for Plaintiff / Petitioner  
P.O. Box 190931  
Boise, Idaho 83719  
(208)250-5580

SUBSCRIBED and SWORN to before me this 6th day of July, 2011.

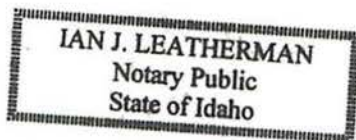
  
NOTARY PUBLIC FOR IDAHO

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Walla, ID  
Residing at:

12/14/2017  
My Commission Expires:

AFFIRMATION OF POWER OF ATTORNEY - 2



CERTIFICATE OF SERVICE

We the undersigned, hereby certify that on the <sup>13TH</sup>~~6TH~~ day of JULY, 2011, a true and correct copy of the foregoing Affirmation of Power of Attorney was mailed, postage paid, by U.S. mail/hand delivered to the following persons.

Michelle Emerson  
Clerk of the District Court  
Jerome County Judicial Annex  
233 W. Main St.  
Jerome, Idaho 83338  
(~~hand delivered~~)  
MAILED

John Horgan  
Office of Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, Idaho 83338  
(mailed)

Jaimi Dean Charboneau, Plaintiff / Petitioner  
#22091, Unit 11, A-15-B  
P.O. Box 14  
Boise, Idaho 83707  
(mailed)

District Court Judge, Honorable Robert Elgee  
Atten: JoLynn Drage  
Office of the Clerk of the Court  
Blaine County Courthouse  
206 2<sup>nd</sup> Avenue S., Suite 200  
Hailey, Idaho 83333  
(mailed)

By Bessie M. Charboneau  
Bessie May Charboneau,  
Power of Attorney on behalf of and for Plaintiff/ Petitioner

By Thomas E. Bergstrom July 6, 2011  
Thomas E. Bergstrom  
Power of Attorney on behalf of and for Plaintiff/ Petitioner  
AFFIRMATION OF POWER OF ATTORNEY – 3 -

POWER OF ATTORNEY

STATE OF IDAHO )  
( SS:  
COUNTY OF CLEARWATER)

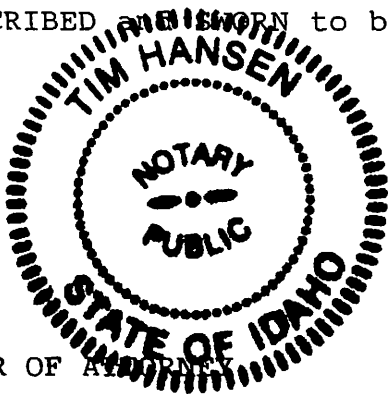
BE IT KNOWN BY ALL INDIVIDUALS BY THESE PRESENTS;  
that I, Jaimi Dean Charboneau, presently residing at: ICI-O,  
381 W. Hospital Dr., in the city of Orofino, County of  
Clearwater, and the State of Idaho; do hereby make, constitute  
and appoint Bessie May Charboneau, my true and lawful attorney  
in fact to act in my place and stead for the purposes of:  
Conducting all of my legal affairs concerning any Civil or Criminal  
matter which is either currently pending in a court of law, or any  
Civil or Criminal matter which might arise from a showing of cause  
and prejudice pursuant to the laws of this State and the  
Constitution of the United States of America.

HEREBY granting and giving unto said person the authorization,  
power and authority to do and perform any and all acts necessary  
or incident to the performance and execution of the power herein  
expressly granted, with the power to do and preform all acts  
authorized hereby, as fully and to all intents and purposes as the  
grantor might or could do if personally present and personally  
acting, with full power of substitution.

Dated this 24, day of March, 2011

SUBSCRIBED AND SIGNED to before me this 24, day of March, 2011.

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L



POWER OF ATTORNEY

Jaimi Dean Charboneau  
Jaimi Dean Charboneau  
Principal -- Grantor

Tim Hansen  
NOTARY PUBLIC FOR IDAHO

Boise County  
Residing at:

Sept 3, 2016  
My Commission Expires:

POWER OF ATTORNEY

STATE OF IDAHO )  
( SS:  
COUNTY OF CLEARWATER )

BE IT KNOWN BY ALL INDIVIDUALS BY THESE PRESENTS, that I, Jaimi Dean Charboneau, presently residing at: ICI-O, Hospital Dr. North, #23, in the City of Orofino, County of Clearwater, and the State of Idaho; do hereby make, constitute and appoint Becki Champion, and Tom Bergstrom, my true and lawful Attorney(s) in fact to act in my place and stead for the purposes of: Conducting all of my legal affairs concerning any Civil or Criminal matter which is either currently pending in a court of law or, any Civil or Criminal matter which might arise from a showing of cause and prejudice pursuant to the laws of this State and the Constitution of the United States of America.

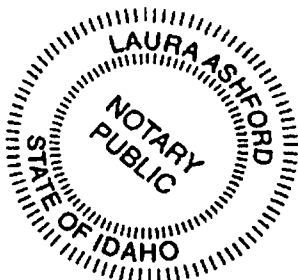
HEREBY granting and giving unto said persons the authorization, power and authority to do and perform any and all acts necessary or incident to the performance and execution of the power herein expressly granted, with the power to do and preform all acts authorized hereby, as fully and to intents and purposes as the grantor might or could do if personally present and personally acting, with full power of substitution.

Dated this 21, day of April, 2010.

Jaimi Dean Charboneau  
Jaimi Dean Charboneau  
Principal - Grantor

SUBSCRIBED and SWORN to before me this 21st day of April, 2010

S  
E  
A  
L



[Signature]  
NOTARY PUBLIC FOR IDAHO

[Signature]  
Residing at:  
July 26 2011  
Commission Expires:

POWER OF ATTORNEY

BRIAN M. TANNER  
 Attorney at Law  
 137 Gooding Street W.  
 Twin Falls, ID. 83301  
 Telephone: (208) 735-5158  
 Facsimile: (208) 734-2383  
 Idaho State Bar #7450

DISTRICT COURT  
 FIFTH JUDICIAL DISTRICT  
 JEROME, IDAHO

2011 JUL 21 AM 11 45

Michelle Emerson  
 BY *[Signature]*  
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
 IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

ORDER TO EXTEND TIME TO RESPOND  
 TO COURT'S INTENT TO DISMISS  
 PURSUANT TO I.C. § 19-4906

The Court, having considered the Petitioner's Motion to Extend Time to Respond to the Court's Intent to Dismiss Pursuant to I.C. § 19-4906, and good cause having been found therein, IT IS HEREBY ORDERED, that the Petitioner be allowed an additional 2 months from today's date to provide a response brief to the Court's Notice of Intent to Dismiss. (X) see below:

*In response to counsel's motion: Charboneau's claims of factual*

Dated this 19 of July, 2011.

*inverness have been reviewed ad nauseam through a multitude of appeals + post conviction cases.*

*Debt 1 Egan*  
 Honorable Judge

*Unless good cause is demonstrated by counsel beforehand for exploring any such claims, the court will not be providing counsel or paying fees for that endeavor. IF counsel thinks it is possible to state a claim with Charboneau's allegations of newly discovered evidence, be my guest, but that is the primary objective currently - to survive the court's notice of intent to dismiss.*

*of Egan*



**CERTIFICATE OF SERVICE**

The undersigned, a Deputy Clerk in the Jerome County Magistrate's Office, Jerome, Idaho, hereby certifies that on the **22<sup>nd</sup> day of July, 2011**, she caused a true and correct copy of the foregoing ***ORDER TO EXTEND TIME TO RESPONDS TO COURT'S INTENT TO DISMISS*** to be distributed via the following:

John Horgan  
Prosecuting Attorney's Office  
233 West Main St.  
Jerome, ID 83338

☒ Court Folder

Brian Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301

☒ U. S. Mail



---

Karen Wood, Deputy Clerk



BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
JEROME COUNTY, IDAHO

2011 JUL 21 PM 3:05  
Michelle Emerson  
BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO ALLOW PETITIONER  
ACCESS TO PROPERTY FOR THE  
PURPOSE OF OBTAINING EVIDENCE

COMES NOW, the Petitioner, by and through counsel, hereby requests from the Court,  
an Order granting the petitioner access to property for the purpose of discovering evidence.

In the Court's Notice of Intent to Dismiss Pursuant to I.C. § 19-4906, the Court states:

"There are seven available claims for post-conviction relief under I.C. § 19-4901. Unless Charboneau fits within the statutory criteria, his latest petition fails to state a claim, and is subject to summary dismissal....**unless there is a basis for some new claim under § 19-4901, supported by facts rather than Charboneau's conclusions, this assertion is subject to summary dismissal.**"

I.C. § 19-4901(4) states a remedy under the post conviction statutes is available where:

there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

The Applicant provided to the Court as part of his application for post conviction relief a recently discovered letter from Tira Arbaugh Halman, written over two decades ago on

September 6, 1989. In that letter, which is referenced as Exhibit L in the application, Ms. Halman states on page 5, "one other thing that bothers me sir is something Marc Haws the new prosecutor from Boise had told us to do. Mr. Haws has told us that we need to get rid of Mom's Calamity Jane rifle." Ms. Halman in her letter states that the rifle was buried on the 'El Rancho' property behind the potato cellar.

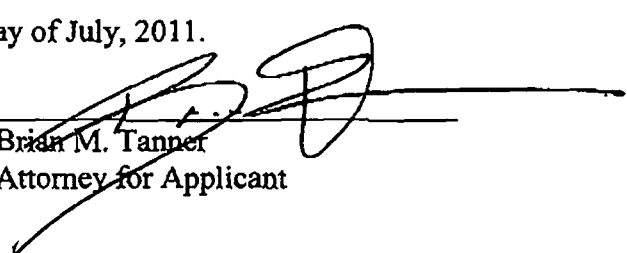
This rifle is important to Mr. Charboneau's case as it is evidence of material fact not previously presented, which might require vacation of the conviction. The rifle is important because it is the only weapon Mr. Charboneau admitted to firing and not the weapon introduced at trial to convict him.

In order to comply with the Court's limited request to "provide a basis for some new claim under I.C. § 19-4901," the Petitioner requests the opportunity to examine the land where the weapon might have been buried at the instruction of Mr. Marc Haws according to the letter from Ms. Halman.

The "El Rancho" property is currently owned by the Church of Jesus Christ of Latter Day Saints. The point of contact is Mr. Frank K. Judd, Farmland Reserve, Inc., 139 E. South Temple, Suite 600, Salt Lake City, Utah 84111-1103. Mr. Judd has been contacted but will not allow a search of the property without an order from the court.

The family has hired an independent contractor to conduct a search of the land with specialized metal detector equipment.

Respectfully Submitted This 21<sup>st</sup> day of July, 2011.


  
\_\_\_\_\_  
Brian M. Tanner  
Attorney for Applicant

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 4<sup>th</sup> day of July, 2011, I caused a true and correct copy of the foregoing MOTION TO ALLOW PETITIONER ACCESS PROPERTY FOR THE PURPOSE OF OBTAINING EVIDENCE to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary



BRIAN M. TANNER  
 Attorney at Law  
 137 Gooding St. West  
 Twin Falls, ID 83301  
 Telephone: (208) 735-5158  
 Facsimile: (208) 734-2383  
 Idaho State Bar # 7450

DISTRICT COURT  
 FIFTH JUDICIAL DIST  
 JEROME COUNTY, IDAHO

2011 SEP 8 PM 3 12

*Michelle Emerson*  
 CLERK  
 BY \_\_\_\_\_  
 DEPUTY CLERK

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME**

JAMI DEAN CHARBONEAU, )

Petitioner, )

v. )

THE STATE OF IDAHO, )

Respondent. )

Case No. CV-2011-638

**VERIFIED PETITION TO  
 ENTER AND INSPECT  
 REAL PROPERTY**

COMES NOW the above-named Petitioner, by and through his counsel of record, Brian M. Tanner, and submits this Verified Petition to Enter And Inspect Real Property, based upon the authority set forth in *State v. Babb*, 125 Idaho 934, 877 P.2d 905 (1994). The allegations supporting this Petition are as follows:

1. Petitioner has filed a Petition and Affidavit for Post-Conviction Relief ("PPCR") which is pending before the Court; the conviction in issue arose from the prosecution of Petitioner for the murder of Marilyn Arbaugh.

2. The precipitating event upon which this PPCR is based is the disclosure on March 18, 2011, that certain legal materials and other documents were confiscated and hidden from Petitioner.

3. There is new evidence before the Court in the form of competent witness statements and verifiable information that the confiscation of legal materials was the product of a conspiracy by and between court personnel, agents of the Idaho Department of Corrections and Deputy Attorneys General of the State of Idaho (see Exhibits J and F to the PPCR).

4. Among the legal materials and documents confiscated is a letter authored by Tira Arbaugh ("Arbaugh letter") dated September 6, 1989, and addressed to Judge Becker of this Court, who had been the presiding Judge over the above-mentioned murder prosecution; Tira Arbaugh was a material witness called by the State in the prosecution of Petitioner, but has since passed away.

5. The Arbaugh letter contains a number of astonishing revelations as to a conspiracy by and between law enforcement agents, prosecutors and herself to fabricate and conceal evidence from the defense (see Exhibit L to PPCR). These admissions and revelations constitute statements against penal and civil interest which is an exception to the hearsay rule and admissible in these proceedings.

6. The significant revelation contained in the Arbaugh letter, for purposes of this Petition, concerns the alleged murder weapon, that is, a nylon Remington .22 caliber rifle, that the prosecution claimed was possessed by Petitioner to murder the victim. The Arbaugh letter reveals that this murder weapon was actually in the possession of Tira's sister, Tiffnie, at the time of the alleged murder (Arbaugh letter, p. 4).

7. Moreover, the Arbaugh letter reveals that the deceased had possession of a second .22 caliber Remington rifle referred to herein as the "Calamity Jane", just prior to her death. The Petitioner maintains in this proceeding that he wrestled the Calamity Jane rifle from the deceased after she threatened him, and that he had placed this gun in a nearby field while waiting for law enforcement officers to arrest him.

8. Most significantly for the purposes of this Petition is the revelation in the Arbaugh letter of the following events:

One other thing that bothers me sir is something Marc Haws the new prosecutor from Boise had told us to do. Mr. Haws has told us that we need to get rid of moms Calamity Jane rifle. I don't understand why he would want us to do that but grandpa & me & uncle Jimmy we all went out to the el-rancho property last week & we buried moms rifle out there behind the potato cellar where we used to feed the horses. Uncle Jimmy wrapped moms riffle [sic] in an old blanket & buried right behind the cellar just a few feet from the place where he had thrown some of moms other things in the crawl space at the back of the potato cellar a few weeks after the day mom died.

(Arbaugh letter, pp. 5,6)

9. That based on this newly discovered Arbaugh letter, it is now reasonable and necessary for Petitioner to enter and inspect the property described to locate the Calamity Jane rifle.

10. That the property described in the Arbaugh letter was known as the El Rancho 93 and is situated on the southeast corner of Hwy 93 and crossroad W500N. The property is now owned by Farmland Reserve, Inc. and managed by Mr. Frank Judd.

11. That Petitioner has made arrangements for a Geophysical Investigation to be performed by Geophysical Survey, LLC (see Exhibit X to PPCR) and counsel for Petitioner has been advised that no damage or injury to the real property will occur as a result of the requested survey.

12. That the equipment provided by Geophysical Survey, LLC has the capacity to detect metal at depths in excess of 18 inches and that the property has not been inspected before with equipment that has a capacity to detect metal in excess of 18 inches.

13. That Petitioner, through his investigator, Tom Berry, has requested permission to conduct said survey; however, permission has been denied and the Jerome County Prosecuting Attorney's Office has instructed Farmland Reserve, Inc. to refuse access.

DATED This 7<sup>th</sup> day of September, 2011.

  
BRIAN M. TANNER  
Attorney for Petitioner

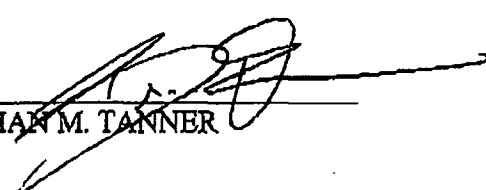
**VERIFICATION**

STATE OF IDAHO            )  
                                      :SS  
County of Jerome         )

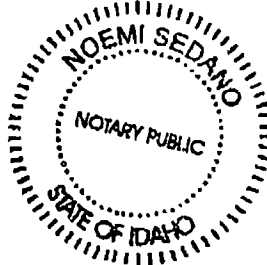
I, BRIAN M. TANNER, being first duly sworn upon oath, depose and say as follows:

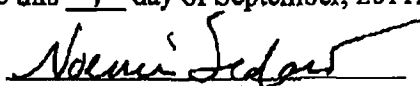
That I have read the foregoing VERIFIED PETITION TO ENTER AND INSPECTION REAL PROPERTY and know the contents thereof to be true and correct to the best of my knowledge and belief.

DATED This 7<sup>th</sup> day of September, 2011.

  
BRIAN M. TANNER

SUBSCRIBED AND SWORN To before me this 7 day of September, 2011.



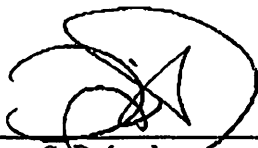
  
Notary Public for Idaho  
Residing at: Jerome, ID

**CERTIFICATE OF SERVICE**

I undersigned, certify that on the 8th day of September, 2011, I caused a true and correct copy of the foregoing VERIFIED PETITION TO ENTER AND INSPECT REAL PROPERTY to the following person(s):

Jerome County Prosecuting Attorney  
300 N. Lincoln, Room 307  
Jerome, Idaho 83338

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2011 SEP 8 PM 3 13

*Michelle Emerson*  
CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

SECOND MOTION TO EXTEND TIME TO  
RESPOND TO COURT'S INTENT TO  
DISMISS PURSUANT TO I.C. § 19-4906

COMES NOW, the Petitioner, by and through counsel of record, and does hereby request additional time to respond to the Court's Notice of Intent to Dismiss Pursuant to I.C. § 19-4906.

This is the second time the Petitioner has requested an extension of time. The Petitioner and counsel for the Petitioner are well aware of the Court's extreme hesitation regarding this case and the dedication of county funds to pay for the Petitioner's Amended Application for Post Conviction Relief. The Petitioner requests an extension of time for the following reasons.

1. On March 18, 2011, a letter from Tira Arbaugh, dated September 6, 1989, and addressed to Judge Becker of this Court, was discovered after being concealed, or intentionally concealed for over two decades. The contents of the letter are extremely disturbing as the letter suggests that the prosecution and investigators hid evidence and altered the testimony of Tira

MOTION TO EXTEND TIME TO RESPOND TO COURT'S INTENT TO DISMISS  
PURSUANT TO I.C. §19-4906 - 1

Arbaugh who was a key eye witness in the first degree murder case against Jaime Charboneau.

This letter deserves appropriate consideration and scrutiny.

2. The family of Jami Dean Charboneau recently hired a special investigator on August 22, 2011 to conduct an investigation related to this case and specifically to look into any possible new evidence and the validity of that evidence consistent with the requirements of Idaho's post conviction statutes. *Please see Affidavit of Tom Berry attached as Exhibit A.*

3. This is an enormous case. The Petitioner needs time to interview witnesses and review massive piles of transcripts, expert reports, and other motions previously filed.

4. The Court, upon assignment of an attorney to represent the Petitioner, has clearly stated that the responsibility of the court appointed attorney is not to reopen the case, but simply to redraft the application for post conviction relief. Counsel for Petitioner has attempted to frame arguments in this case without a knowledge of what happened in the case. This is an extremely difficult task. Counsel cannot represent the Petitioner in good faith without understanding the case. The court's primary concern is related to expenditure of county funds. Counsel for petitioner fully expects the court to review the hours submitted by Counsel so that Counsel may only be compensated for what the court deems appropriate. This way, the Court has control of the funds and can dedicate those funds in a manner the Court considers fair and based on the Court's original expectations.

5. Simply opening this case and then shutting it down will not make this case go away. The allegations in the letter from Tira Arbaugh are shocking and reveal a pattern of intentionally concealing important evidence. Further, given that the letter has just been discovered, neither the Petitioner, nor the Courts, have had previous opportunity to examine specific aspects of the letter. Had this letter been revealed when it was written, this case could

MOTION TO EXTEND TIME TO RESPOND TO COURT'S INTENT TO DISMISS  
PURSUANT TO I.C. §19-4906 - 2



have turned out much differently. A lack of information on the part of the defense is an excellent source of leverage for the prosecution.

Given that the Petitioner has been in prison for twenty seven years and was sentenced to life in prison, it is worth the effort to investigate the claims in the letter and attempt to understand how the evidence concealed related to the prosecutor's ability to prove first degree murder at trial.

For the following reasons, the Petitioner requests additional time to respond to the Court's Notice of Intent to Dismiss. The Petitioner requests 60 to 90 days to attempt to discover new evidence and to amend the application for post conviction relief.

Respectfully Submitted This <sup>12</sup>9 day of September, 2011.

  
Brian M. Tanner

9-8-11  
Date

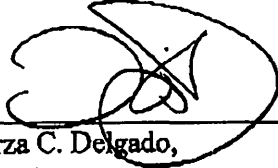
MOTION TO EXTEND TIME TO RESPOND TO COURT'S INTENT TO DISMISS  
PURSUANT TO I.C. §19-4906 - 3

**CERTIFICATE OF SERVICE**

I undersigned, certify that on the 28th day of September, 2011, I caused a true and correct copy of the foregoing SECOND MOTION TO EXTEND TIME TO RESPOND TO COURT'S INTENT TO DISMISS PUSUANT TO I.C. §19-4906 to the following person(s):

Jerome County Prosecuting Attorney  
300 N. Lincoln, Room 307  
Jerome, Idaho 83338

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

**EXHIBIT A**

**GENERAL AFFIDAVIT****STATE OF: IDAHO****COUNTY OF: ELMORE**

**PERSONALLY** came and appeared before me, the undersigned Notary, the within named **TOM BERRY**, who is a resident of **ELMORE** County, State of **IDAHO**, and makes this his/her statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his/her knowledge:

**That your affiant is over 18 years of age and a resident of the state of Idaho. I am a Privately contracted investigator. I have thirty years of Law enforcement experience that includes 10 years as a Felony Detective, 13 years as a Police Chief and the remainder as a Patrol Officer/Deputy. I have been retired from Law Enforcement since August of 2007.**

**On august 22, 2011, I was contacted by Besty Charboneau, Mother of Jaimi Dean Charboneau. The purpose of this meeting was to discuss retaining me to conduct an investigation into certain aspects of Criminal Case of Jaimi Charboneau where as he was convicted of First Degree Murder. I have not been retained to reinvestigate the total case, but to look into possible new evidence and the validity of that evidence for presentation to the court for any possible further Judicial review.**

**5. Locate and interview the following individuals as well as any others who may have information to assist the court in this matter:**

- a. Jaimi Charboneau**
- b. James C. Arbaugh**
- c. Rhonda Arbaugh**
- d. Tiffany Arbaugh**
- e. Mike Hiskett**
- f. Cheryl Watts**
- g. Mito Alonzo**
- h. Jim d. Griggs**
- i. Nichole Griggs**
- j. Larry Webb**
- k. Rick Ustick**
- l. Robert Gaston**
- m. Adamson Coats**
- n. Garry Carr**
- o. Bart Chisham**
- p. R. E. Clark**

**The above list is not all inclusive of those that I may interview and some on the list may not be needed to interview as my investigation moves forward. I believe it may take as long as 60 to 90 days to conclude my investigation, depending on the availability of qualified persons needed to assist with the technical aspect of the case.**

**It is my understanding that I need to have concluded my investigation and have a definitive answer to the questions concerned, by September 21 of 2001. I am finding that it will be very difficult if not impossible to conduct a proper and adequate investigation in that amount of time. The investigation may include the following:**

- 1. Reviewing the large volume of documents related to this case in order understand the prior investigations will take a considerable amount of time.**
- 2. Locating, retaining and obtain a qualified review by a Handwriting examiner for certain documents, including the comparison of a statement written for the Jerome County Sheriff's office by Tira Arbaugh on July 1, 1985 with that of a letter written by her to Judge Becker dated September 6, 1989. I am already finding it very difficult to locate an examiner particularly because of the deadline imposed at this time.**
- 3. Locate and Identify Deputy #345 and determine the validity of a statement by him in which he alleges that he witnessed Court Clerk Cheryl Watts on 9-11-89, intercept the Document identified in Number two above , open and read it, then discuss the destruction of the document with Deputy # 345.**
- 4. Locate and interview Former Janitor Melvin Wright to determine the validity of his statement concerning his finding a Bag that contained a pistol, located in the roof of the court house and which allegedly part of the case.**

DATED this the 6 day of September, 2011

Tom Berry  
Signature of Affiant

SWORN to subscribed before me, this 6<sup>th</sup> day September, 2011

Tracy K. Beebe  
NOTARY PUBLIC

My Commission Expires:

1-31-2017



BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2011 OCT 25 AM 11 08  
*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO REQUEST A RULING ON THE  
PETITIONER'S MOTION TO ALLOW  
PETITIONER ACCESS TO PROPERTY FOR  
THE PURPOSE OF OBTAINING EVIDENCE  
AND VERIFIED PETITION TO ENTER AND  
INSPECT REAL PROPERTY

COMES NOW, the Petitioner, by and through counsel, hereby requests from the Court, a Ruling on the Petitioner's prior requests to inspect the land previously known as "El Rancho." In a recently discovered letter from Tira Arbaugh, which is the basis for this current amended successive application for post conviction relief, Ms. Arbaugh states that she buried a gun identified as "Calamity Jane" at the request of the prosecutor, Marc Haws. This gun is a valuable piece of evidence.

In order to find the gun referred to in the letter, the Petitioner requested in his Motion to Allow Petitioner Access to the Property for the Purpose of Obtaining Evidence, for the authority to inspect the land where the gun might be buried. This motion was filed on July 22, 2011. A ruling has not been made on this motion.



The Petitioner again requested permission to inspect the land by filing a Verified Petition and Order to Inspect the land. This was filed with the Court on September 8, 2011. A ruling has not been made on this request.

Therefore, the Petitioner respectfully request that the court make a ruling on these two prior motions.

Respectfully Submitted This <sup>th</sup>24 day of October, 2011.

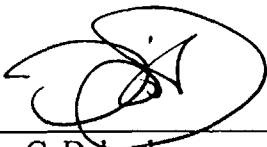
  
\_\_\_\_\_  
Brian M. Tanner  
Attorney for Applicant

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 28th day of October, 2011, I caused a true and correct copy of the foregoing MOTION TO REQUEST A RULING ON THE PTITIONER'S MOTION TO ALLOW PETITIONER ACCESS TO PROPERTY FOR THE PURSUE OF OBTAINING EVIDENCE AND VERIFIED PETITION TO ENTER AND INSPECT REAL PROPERTY to the following person(s):

Jerome County Prosecutor

☐ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☒ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2011 OCT 25 AM 11 08  
*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO APPOINT A WRITING SAMPLE  
EXPERT AT COUNTY EXPENSE

COMES NOW, the Petitioner, by and through counsel, hereby requests from the Court, an Order which will allow the Petitioner to hire an expert for the purpose of evaluating several handwriting samples.

The Amended Successive Application for Post Conviction Relief contains a letter from Tira Arbaugh which was written on September 6, 1989 and only recently discovered in March of this year. In this letter, Ms. Arbaugh states that she was advised by law enforcement officers to change her testimony. She further states that the prosecutor, Marc Haws, advised her to bury important exculpatory evidence. This letter is the basis for the Petitioner's Amended Post Conviction Relief Application.

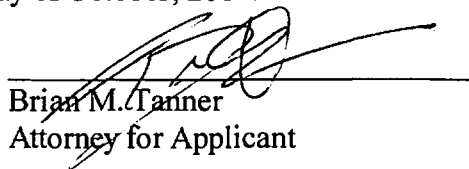
In order to confirm that Ms. Arbaugh did in fact write the letter, the Petitioner has collected other writing samples, including Ms. Arbaugh's original witness statement to the

Jerome County police on July 1, 1984. These writing samples are identified as Exhibit I in the Amended Petition.

The Petitioner requests that an expert be appointed to evaluate the writing samples in order to determine if Tira Arbaugh is in fact the author.

As the Petitioner does not have funds to hire an expert, and is indigent, he requests that the Court appoint a hand writing expert and that the fees be paid for at county expense.

Respectfully Submitted This 24<sup>th</sup> day of October, 2011.

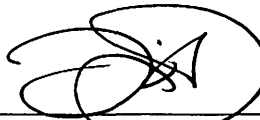
  
\_\_\_\_\_  
Brian M. Tanner  
Attorney for Applicant

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 28th day of October, 2011, I caused a true and correct copy of the foregoing MOTION TO APPOINT A WRITING SAMPLE EXPERT AT COUNTY EXPENSE to the following person(s):

Jerome County Prosecutor

☐ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☒ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2011 OCT 25 AM 11 08

*Michelle Emerson*  
CLERK

BY \_\_\_\_\_  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

JAMI DEAN CHARBONEAU, )

Petitioner, )

v. )

THE STATE OF IDAHO, )

Respondent. )

Case No. CV-2011-638

**AFFIDAVIT OF FREDERICK R.  
BENNETT**

STATE OF IDAHO )

:ss

County of Ada )

FREDERICK R. BENNETT, Being first duly sworn upon oath, deposes and says:

1. Affiant is sixty-three (63) years old, a long-time resident of Idaho, currently residing at 9934 Waller St., Hammet, Idaho, and is a professional musician by trade, known as Pinto Bennett.

2. Affiant has been familiar with and a friend of Petitioner and his mother, Betsy Charboneau, over the past many years.

3. Affiant was also familiar with and a friend of Marilyn Arbaugh, deceased, and her daughter, Tira Arbaugh, also deceased, in years past.

4. Affiant has been shown a handwritten letter purportedly written by Tira Arbaugh, dated September 6, 1989, addressed to Judge Becker (Exhibit L to the pending Petition for Post-Conviction Relief in the above matter).

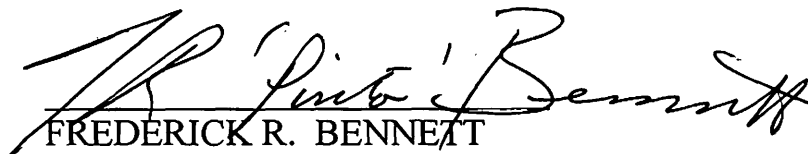
5. Affiant is the "Pinto Bennett" referenced on page 7 of said letter.

6. Affiant does recall a conversation with Tira Arbaugh in the summer of 1989 during a break at a street dance in Bruneau, Idaho, when Tira Arbaugh stated that she was upset and disturbed about various untruths pursued by the police and prosecutors concerning the prosecution of Petitioner.

7. Affiant did advise Tira Arbaugh to tell people about these untruths and suggested that she write a letter to the presiding Judge.


8. Affiant is also familiar with the rifle referred to in Tira's letter as "Calamity Jane". Marilyn Arbaugh was proud of this gun and personally displayed it at Affiant's bar in Bennett, Idaho, prior to her death in 1984.

DATED This 1 day of September, 2011.

  
FREDERICK R. BENNETT

SUBSCRIBED AND SWORN To before me this 1 day of September,  
2011.



  
Notary Public for Idaho  
Residing at: Boise ID

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That I served a true and correct copy of the foregoing document, by depositing the same in the U.S. Mail, postage prepaid, this 25<sup>th</sup> day of October 2011, upon the following:

Jerome County Prosecuting Attorney  
300 N. Lincoln, Room 307  
Jerome, ID 83338





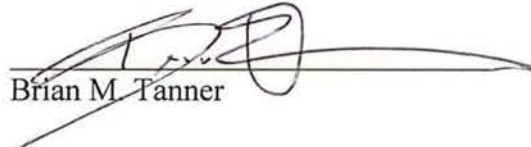
2011 OCT 25 AM 11 08  
Michelle Emerson  
CLERK  
BY  
DEPUTY CLERK

Charboneau. Mr. Charboneau in turn received the packet from Idaho Department of Corrections Officer Mike Hiskett on March 18, 2011.

4. The contents of this packet which Mr. Charboneau recently received are identified and catalogued in Mr. Berry's affidavit and inventory.
5. I relied on this packet in amending Mr. Charboneau's application for post conviction relief. In the Amended Application, all documents which were retrieved from the packet are labeled as Exhibits A through G in the AMENDED PETITION and in the RESPONSE TO NOTICE OF INTENT TO DISMISS PURSUANT TO I.C. §19-4906 AND REQUEST FOR EVIDENTIARY HEARING. These are the same Exhibits which are part of Mr. Charboneau's original verified petition.
6. In addition to the packet, labeled as Exhibits A through G, I also received from Mr. Berry other documents which I refer to as Exhibits H through M in the AMENDED PETITION and in the RESPONSE TO NOTICE OF INTENT TO DISMISS PURSUANT TO I.C. §19-4906 AND REQUEST FOR EVIDENTIARY HEARING. I use these documents in order to prove the authenticity of the letter from Tira Arbaugh which I have labeled as Exhibit G in the AMENDED PETITION.
7. Exhibit H in the AMENDED PETITION is an affidavit signed by Frederick Bennett.
8. Exhibit I is a photocopy of the original witness statement to the Jerome County Police from Tira Arbaugh as well as additional writing samples. The purpose of these documents is to be able to compare writing samples between these documents and the recently discovered letter from Tira Arbaugh, identified as Exhibit G. I received these documents from Tom Berry, who received them from Tira Arbaugh's family.

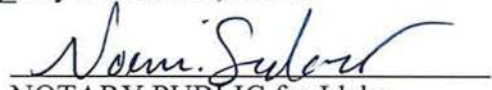
9. Exhibit J is a sworn statement from Elizabeth Miles which was submitted to Jerome County at the request of the prosecutor. I received this document from Tom Berry.
10. Exhibit K is an 8 page letter from Jaime Charboneau on August 12, 1984 to his first attorney, Golden Bennett. I received this document from Tom Berry. Mr. Berry explains that he received the document from a prior investigator, CJ Nemeth.
11. Exhibit L is an additional letter from Jaime Charboneau on August 13, 1984, which supplements the August 12, 1984 letter to Mr. Golden Bennett. I received this document from Tom Berry who explains that he received the document from CJ Nemeth.

Further your Affiant sayeth naught.

  
Brian M. Tanner

SUBSCRIBED AND SWORN before me this 24 day of October, 2011.




  
NOTARY PUBLIC for Idaho  
Residing at: Jerome, ID  
My Commission Expires: 11/27/15

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 28th day of October, 2011, I caused a true and correct copy of the foregoing AFFIDAVIT OF BRIAN M. TANNER to the following person(s):

Jerome County Prosecutor

☐ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☒ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Phone: 208.735.5158  
Fax: 208.734.2383  
ISB #. 7450

Attorney for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2011 OCT 25 AM 11 08  
*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

JAIMI DEAN CHARBONEAU, )  
)  
Petitioner, )  
v. )  
)  
THE STATE OF IDAHO, )  
)  
Respondent. )  
\_\_\_\_\_ )

Case No. CV-2011-638

**AMENDED PETITION  
FOR POST-CONVICTION  
RELIEF**

COMES NOW the Petitioner, by and through his attorney of record, BRIAN TANNER, and hereby files this AMENDED PETITION FOR POST-CONVICTION RELIEF ("Amended Petition"). Petitioner hereby incorporates the allegations and verifications set forth in his original PETITION FOR POST-CONVICTION RELIEF filed on June 15, 2011 ("Original Petition").

1. Petitioner is currently detained in the custody of the Idaho State Correctional Institution in Boise, Idaho, and under the control and jurisdiction of the Idaho Department of Corrections.

2. The Judgment in issue was imposed by the Fifth Judicial District of the State of Idaho, Jerome County.

3. The case numbers for which Judgment and Sentence were imposed are 1027 and 1028, and Petitioner was convicted of First Degree Murder.

4. Petitioner was ultimately sentenced to a “fixed life” sentence in October of 1991.

5. Petitioner was found guilty by verdict of a jury.

6. Petitioner has previously appealed and filed prior petitions for post-conviction relief, reported as *State v. Charboneau*, 118 Idaho 129, 774 P.2d 299 (1989) (“Charboneau I”); *State v. Charboneau*, 124 Idaho 497, 861 P.2d 67 (1993) (“Charboneau II”); *Charboneau v. State*, 140 Idaho 789, 102 P.3d 1108 (2004) (“Charboneau III”), *Charboneau v. State*, 144 Idaho 900, 174 P.3d 870 (2007) (“Charboneau IV”), and most recently, *Charboneau v. State*, Jerome County Case No. CFV-08-1342. Petitioner requests that this Court take judicial notice of these proceedings.

7. Petitioner has previously sought leave to proceed in forma pauperis and counsel, Brian Tanner, has been appointed as counsel.

8. The newly-discovered evidence upon which Petitioner seeks relief is as follows:

a. On March 18, 2011, Petitioner was given a “packet” of legal materials and documents by Officer Hiskett at the North Idaho Correctional Institution in Orofino, Idaho. A complete and accurate copy of these documents is presented in the AFFIDAVIT OF BRIAN TANNER, filed herewith and referred to herein as Exhibits A through G (these exhibits, numbered differently, were incorporated into Petitioner’s original PETITION).

b. Contained within this packet of newly-discovered evidence is *Exhibit A* which is an electronic message exchange in November of 2004 by and between correctional personnel

Dewayne A. Shedd (paralegal) and Lt. William Unger (officer). These electronic exchanges reveal and describe a preexisting conspiracy by the above-named correctional officers and Marc Haws<sup>1</sup> to illegally intercept, seize and confiscate Petitioner's mail, and referred to therein as the "Charboneau mission". This conspiracy included a fabrication of a log sheet to falsely reflect that Petitioner had signed for and received the packet documents. This electronic exchange and conspiracy to illegally intercept and confiscate Petitioner's mail was unknown to Petitioner prior to March 18, 2011.

c. Contained within the packet of newly-discovered evidence is *Exhibit B*, which is a handwritten note authored by A. Dwayne Shedd and dated June 27, 2003. The note reflects the illegal conspiracy outlined in paragraph (b) above, but also describes the participation of Deputy Attorney General Tim McNeese. This note further focuses the conspiracy on written material from Larry Gold, former Jerome County Sheriff, and Tira Arbaugh, daughter of the deceased murder victim, Marilyn Arbaugh, and former step-daughter of Petitioner. This note was unknown to Petitioner prior to March 18, 2011.

d. Contained within the packet of newly-discovered evidence is *Exhibit C* which is a copy of a sworn statement of former Jerome County Sheriff Larry Gold ("Statement"), dated November 13, 2001. The Statement refers to a June 3, 2001 letter authored by Mr. Gold to Petitioner (para. 4), a copy of which was also contained in the packet, but is not newly-discovered and has been referenced in previous proceedings. *See Exhibit D for June 3, 2001 letter.* This sworn Statement, however, was unknown to Petitioner prior to March 18, 2001, and raises new allegations for purposes of this proceeding. Specifically, the Statement indicates that District Court Clerk Cheryl Watts may have intercepted a letter addressed to Judge Philip Becker

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<sup>1</sup> Marc Haws was the Special Deputy Attorney General who prosecuted Petitioner through the trial proceedings on behalf of Jerome County.

from Tira Arbaugh. According to the Statement, this assertion was related to Mr. Gold by Chief Deputy Mito Alanzo.

e. Contained within the packet of newly-discovered evidence is *Exhibit E* which is a handwritten note by an unknown author who alleges that he/she witnessed Cheryl Watts intercept a letter addressed to Judge Becker from Tira Arbaugh, dated September 7, 1989. This note was unknown to Petitioner prior to March 18, 2011.<sup>2</sup>

f. Contained within the packet of newly-discovered evidence are *Exhibits F and G*, which are copies of an envelope and lengthy handwritten letter addressed to Mr. Philip Becker, Jerome County Judge, from Tira Arbaugh Holman<sup>3</sup> and with a U.S. Postal stamp of September 7, 1989.

g. The validity of the letter and the identification of Tira Arbaugh as the author of the letter is supported by the following documents:

1. Affidavit of Frederick R. Bennett dated September 1, 2011 which confirms that he suggested Tira Arbaugh write a letter to the presiding judge. *Exhibit H*.
2. Writing samples from Tira Arbaugh which demonstrate her writing style. *Exhibit I*. (The statement by Tira Arbaugh written on July 1, 1984 is retracted in her letter described as *Exhibit G*).
3. Sworn Statement from Elizabeth Miles dated January 8, 2009 which confirm that a new .22 rifle had been purchased for Tira Arbaugh as expressed in Tira's letter. *Exhibit J*.
4. Statement from Jaime Charboneau to his attorney, Golden Bennett, dated August 10, 1984 describing the shoot out as explained in Tira's letter. *Exhibit K*.

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<sup>2</sup> The author is supposedly Deputy Orville Balzar. However, Mr. Balzar denies writing the note. See *Affidavit of Tom Berry*, page 4, paragraph 9.

<sup>3</sup> Tira Arbaugh died approximately 12 years ago.



5. Letter from Jaime Charboneau to his attorney, Golden Bennett, dated August 13, 1984 describing the Calamity Jane rifle. *Exhibit L*.

6. Letter from Jaime Charboneau to his attorney, Greg Silvey in January 2006. *Exhibit M*.

The letter contained many disturbing allegations, paraphrased as follows:

First, Ms. Arbaugh wrote the letter to inform Judge Becker of the truth about the death of her mother, Marilyn Arbaugh, because she was having bad dreams and her mother would want her to tell the truth (page 1). Second, she admits that some of her statements to the police were not true; specifically, Officer Driesel told her to say things that were not really true such as the time she woke up that morning and to not say certain other things such as seeing and talking with Jaimi about her new rifle<sup>4</sup> before he went outside to check on the horses (pages 2 and 3). Third, she also told Officer Driesel that Tiff (her sister) grabbed the new .22 rifle and ran outside after hearing the first shots and that Tiff told her that mom had taken her “Calamity Jane”<sup>5</sup> rifle outside. These facts were not put in her statement as directed by Officer Driesel (pages 4 and 5). Fourth, Officer Webb told Ms. Arbaugh to write in her statement that she heard six or eight more shots after she and Tiff went back into the house – this was not true (page 5). Fifth, Ms. Arbaugh relates another thing that bothered her was that Prosecutor Marc Haws told her and others to get rid of mom’s “Calamity Jane” rifle. She, grandpa and Uncle Jimmy buried it behind the potato cellar (page 6). Ms. Arbaugh told Dwane Brown and Officer Orvil about these things, but everybody told her not to say anything. Ms. Arbaugh knew this was not right and wanted to do the right thing and tell Judge Becker about it (page 6). Finally, Ms. Arbaugh had recently talked with her friend, Pinto Bennett, who convinced her to write this letter. She was

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<sup>4</sup> This .22 rifle was identified at trial as the nylon Remington and the murder weapon.

<sup>5</sup> The “Calamity Jane” rifle is the one Petitioner claimed, in prior proceedings, that he wrestled from Marilyn Arbaugh just prior to her death (see Exhibit M to original Petition herein).

nineteen years old at this time (page 7). This letter, describing these disturbing allegations, was unknown to the Petitioner until March 18, 2011.

9. The newly-discovered evidence cited above establishes a conspiracy by and between correctional personnel Shedd and Unger and Deputy Attorney Generals Marc Haws and Tim McNeese to illegally intercept, seize and confiscate Petitioner's mail and fabricate the cover-up thereof.

10. Said conspiracy appears to have continued for at least a decade prior to its discovery, with the earliest document confiscated dated September 6, 1989 (*Exhibit G*).

11. Said conspiracy deprived Petitioner of relevant and material information pertinent to his underlying conviction, as well as his prior legal efforts to gain relief from this conviction and/or sentence, and thereby denied him his constitutional rights, including, but not limited to his right to due process, right to counsel and right to access to the courts.

12. The newly-discovered evidence cited above also established a conspiracy by and between District Court Clerk Cheryl Watts and others in 1989 to illegally intercept, seize and confiscate mail addressed to Judge Becker from a key witness in the murder prosecution of Petitioner.

13. Said conspiracy deprived Petitioner of relevant and material information pertinent to his underlying conviction, as well as his prior legal and pending legal efforts to gain relief from this conviction and/or sentence, and thereby denied him his constitutional rights set forth in Paragraph 11.

14. The most critical newly-discovered evidence illegally intercepted, seized and confiscated as a result of these conspiracies was the letter authored by Tira Arbaugh (*Exhibit G*) which was intended for Judge Becker prior to Petitioner's re-sentencing proceedings.

15. The letter authored by Tira Arbaugh reveals an effort on her part in conjunction with law enforcement agents and prosecutors to falsely fabricate and conceal relevant material facts and evidence from Petitioner and the Court as outlined above.

16. Had the letter from Tira Arbaugh been received by Judge Becker, it would have been disclosed to Petitioner and his counsel, who could have pursued the disturbing assertions and revelations therein more fully to Petitioner's advantage, particularly for purposes of the pending re-sentencing proceedings at the time, as well as, subsequent post-conviction proceedings challenging the underlying conviction. The Petitioner could have deposed Tira Arbaugh as well before she died.


17. The other newly-discovered evidence outlined in Paragraph 8 above, particularly evidence of the conspiracies to intercept, seize and confiscate mail, could also have been used by Petitioner to raise viable post-conviction claims at a much earlier point in time, thereby causing Petitioner severe prejudice and lost time.

WHEREFORE, Petitioner requests that the Court order the Respondent to file an answer to the Amended Petition herein;

FURTHER, Petitioner requests that this Court vacate the underlying conviction and/or sentence herein;

IN THE ALTERNATIVE, Petitioner requests that this Court set the matter for an evidentiary hearing and attendant discovery to fully resolve any factual disputes.

DATED This 24<sup>th</sup> day of October, 2011.


  
BRIAN TANNER

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 28th day of October, 2011, I caused a true and correct copy of the foregoing AMENDED PETITION FOR POST-CONVICTION RELIEF to the following person(s):

Jerome County Prosecutor

☐ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☒ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

## **EXHIBIT A**

**From:** Shedd, A. Dewyne/paralegal  
**To:** Unger, William/LT.  
**Date:** 11/14/2004 08:47  
**Subject:** Re: Offender Charboneau, Jamie Dean #22091  
Location: ICI-O)/C-2-bunk, B5

LT. Unger, offender Charboneau #22091 currently has an active appeal in Federal Court. I also have a ('filed-copy dated Nov. 6, 2001' of a petition for writ of Habeas Corpus Petition for original Jurisdiction), 'In the Supreme Court of the state of Idaho', on Charboneau.

FYI, when I spoke with Marc Haws last week he said, 'don't worry I've got your backs covered'. He did ask me to relay to you that we should keep this 'Charboneau mission' between the three of us and just carry it out as if it was any normal random check of an inmate's mail/legal mail. Thanks, Shedd

>>> William Unger LT. 11/13/2004 20:32 >>>

Dewayne, I have reviewed this letter you gave me last week. The one that you told me you had removed from an envelope that was mailed to inmate Charboneau, #22091. The name of the person that wrote this letter does appear to be the name that Mark Haws asked us to look out for. Dewayne, I'm not sure that we should be getting involved in this thing. I don't know about you but I damn sure don't want my name to get caught up in an investigation.

Charboneau by himself does not concern me, he is just an inmate. My concern is that this letter was mailed to Charboneau and received at this facility from a man named Larry Gold.

I did a little background research on Larry Gold and I found out that he was at one time the Sheriff in Jerome, Idaho. I also found out he was in law enforcement in California prior that. I don't know the connection between this Larry Gold and Charboneau Dewayne, but something tells me that if Gold went to all the trouble to send this letter to Charboneau, it doesn't make sense to me that he would be in with this Federal Prosecutor Mark Haws who's got us looking through Charboneau's legal mail for the same letter that Gold mailed to Charboneau.

As far as I'm concerned Charboneau has no legal rights and I'm game for anything to help this Federal Prosecutor but let's be careful Dewayne.

Let me know what Haw's says. If he will back us I have no problems with confiscating Charoneau's legal mail. Dewayne, when you speak to Haws again, ask him where Charboneau's current legal actions are? Does he have mail coming from both Federal and State Courts?

Thanks, LT. Unger

ITEM #7-C  
10-4-11 TB

**From:** Shedd, A. Dewyne/paralegal  
**To:** Unger, William/LT.  
**Date:** 11/15/2004 09:26  
**Subject:** Re: Offender Charboneau, Jamie Dean #22091  
Location: ICI-O)/C-2-bunk, B5

LT. Unger, have notified Marc Haws about the documents founding offender Charboneau's mail. I will also shred and delete all old messages.

>>> William Unger LT. 11/14/204 17:22 >>>

Shedd, I agree these documents from Larry Gold do appear to be items that will be of particular interest to Mr. Haws.

I see that name Tira Arbaugh is mentioned again in this affidavit that Larry Gold mailed to Charboneau.

Dewayne, don't forget to do like Haws suggested and make up a list of these documents and attach it to a log sheet in the mailroom indicating that Charboneau signed them.

Thanks LT. Unger

Item # 7-D  
10-4-11  
TS

## **EXHIBIT B**



Per Tim McNeese from the AG's office / Instructed to monitor all of inmate CHARBONEAU's personal / legal MAIL. All incoming And outgoing legal MAIL. If A letter Arrives At JCSO for Charboneau from Larry Gold, A former Sheriff of Jerome County, seize it without notifying Charboneau, look for any documents depicting the name Tim Arbaugh, confiscate Any such documents and notify McNeese immediately. If McNeese is not Available then contact another Attorney MARK Haws At the Federal Court Building in Boise. His phone number And Address is in the directory on my desk. Notified Lt. Unger And he Agreed to help monitor Charboneau's mail.

A. Dolan

6/27/03

Item # 4  
TB  
10-4-11

4-11-12

Removed original  
from file per Judge  
Elges order 4-6-12  
mailed by certified  
mail to Brian Tanner  
4-11-12. Traci B

**COPY**

## **EXHIBIT C**

Tuesday November 13, 2001

SWORN STATEMENT OF  
FORMER JEROME COUNTY SHERIFF  
LARRY GOLD

STATE OF IDAHO       )  
                              )  
                              ) SS  
COUNTY OF JEROME   )  
                              )

Comes now Larry Gold, I do SWEAR upon my oath and under penalty of perjury that the information and facts provided herein are true and correct to the best of my knowledge and belief:

1. That I am a valid citizen of the State of Idaho, I am over the age of (18) eighteen years and competent to testify about the information I declare in this sworn statement.
2. That I was duly elected sheriff of Jerome County at the time of Jamie Charboneau's appeal and resentencing proceedings.
3. That "water-cooler" conversations were often held within my hearing concerning development of case evidence and the disposition of material facts with regard to pertinence or significance.
4. That as I stated in my June 3<sup>rd</sup> 2001 letter to Mr. Charboneau, I am aware of certain improprieties committed by the Jerome County prosecutors office and the special prosecutor from the Idaho Attorney General's office (Marc Haws) in preparing various cases for trial, and specifically Mr. Charboneau's case.
5. That it is my belief that contrary to my efforts and mandates, certain court and county officers often manipulated or affected the facts and evidence of cases to arrange for a finding of guilt.
6. That it is my belief that facts and evidence in the Charboneau case were purposely manipulated and altered to arrange for a verdict of guilty. A specific example of this came to my personal knowledge when in the fall of 1989, my chief deputy

ITEM # 8  
148 of 956  
10-11-01  
TB

Mito Alanzo confided in me his concern about the fact that the District Court clerk Cheryl Watts was in possession of a letter which had been delivered to the Jerome County Courthouse via The United States postal Service. Chief deputy Alanzo informed me that the letter at issue had been addressed to district court Judge Philip Becker and had been sent by Tira Arbaugh, the daughter of Marilyn Arbaugh. Chief Deputy Alanzo told me that the subject matter of this letter had significant relevance concerning the Charboneau case. Chief Deputy Alanzo stated that his concern was that the District Court Clerk Cheryl Watts had requested that he help her to destroy the letter.

7. That I did speak with Jerome County prosecutor John Horgan about the court clerk Cheryl Watts being in possession of the letter that Tira Arbaugh had mailed to Judge Becker, and the allegations made by Chief Deputy Alanzo that Cheryl Watts was conspiring to destroy the letter.
8. That I will be available to the Court for whatever assistance it requires to determine the effect of culpability of the aforementioned parties and the harms they may have caused to occur.

Dated this 13 day of November, 2001

  
\_\_\_\_\_  
Larry Gold  
Jerome County Sheriff, Ret.

## **EXHIBIT D**

---

Jaimi D. Charboneau  
Inmate # 22091 Housing Unit #9  
I.S.C.I.  
Boise, Idaho 83707

June 3, 2001

Dear Jaimi;

Please don't consider my late response to your letter, as a lack of caring or that it was such a low priority that I just got around to it. In fact the circumstance was just the opposite. I have thought of you often during the past many years and your letter woke up new memories and feelings. I am not going to take the approach of "get on with your life" like I read in the letter you enclosed, because that's not what I want to say or how I am feeling.

I trusted you and that did not come easy for me. I knew how you would act in nearly every situation because you are a man of pride. You were young when a terrible string of events took place in your life. Some of those events were your responsibility and you have taken responsibility for them, but then "pieces seem to have been added" which you were not responsible for and "events" that you could have no control over. I believe that these are a source of your inner anger, which is completely understandable. Anger is a normal human emotion. If it were not for the "righteous anger" of a group of wonderful men in Boston who had a "Tea Party" during the late 1700's, we may not be a "Free Nation" today. What you do with your anger can be constructive or destructive. The choice is yours — and yours alone.

I believe that some of the events during your trial caused fear, prejudice and the need for revenge. Multiple persons emerged in need of an event that could transform "some very ordinary people in ordinary jobs" on a journey of personal ego development, which served to feed a hunger for power that became obsessive.

The most disgusting issues were the apparent acts of a few people that "appeared to conspire" to punish a person far beyond the limits of the law, because the law "if fully enforced" may have required a "Guilty Man" to go free. How could this sleepy little town not be "easily self convinced" to "stretch or even manipulate the facts" to arrange for a finding of guilt without sufficient admissible evidence, even if the chain of evidence needed a little repairing here and there, behind the scenes.

Pg. 1 of 2

ITEM # 7-E  
TB  
10-4-11

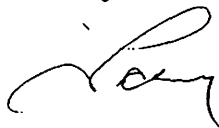
Pg. 2 of 2

There also appeared to be a "collaboration of minds" intelligent enough to controls the events of the time, but "little enough" to feel that they "had to collaborate" because the facts "may not have been strong enough", or "evidence that was collected under suspect conditions, dismissed because of contamination" and may have required manipulation by design. Jaimi, remember that this is just a personal hypothesis now. I have no proof of this in your case, just a deep down feeling that I am right because I have witnessed this "collaboration of minds" do the same thing in a different situation.

Jaimi, if you don't completely understand this letter, it's not you fault. I am not sure what I really want to say, other then it's good to hear from you! Please remember what I said, "It's your choice and your choice alone, what you do with your righteous anger. You can let it destroy you or be a source of strength. Stay is school, any school and keep reading and studying a wide variety of literature, both historic and current. Don't let your mind be dominated by any one thing, especially hate.

Hate can and will destroy nearly everyone. You are a bigger man then that.

Larry

A handwritten signature in black ink, appearing to be the name 'Larry' in a cursive, stylized script.

## **EXHIBIT E**



Letter from Tina Arbaugh / daughter of Marilyn Arbaugh. Letter addressed to Judge Philip Becker.  
Jerome County Courthouse.

Postal stamp on envelope indicates the letter was mailed from Bruneau Idaho on September 7, 1989. A.M.

This letter was given to Judge Becker's court clerk Cheryl Watts on 9-11-1989.

Writer witnessed Cheryl Watts open the envelope and read the letter enclosed.

Not wanting to challenge the court clerk on the legal question regarding the letter, writer elected to simply advise Cheryl Watts against shredding the letter, as that could potentially invite a federal investigation for destroying evidence because the letter was delivered from the U.S. Postal Service; a federal agency. A better way writer told Cheryl Watts was to simply lose the letter in a "ghost" file.

Writer later discussed this matter with Chief Deputy Mito Alanzo and his reply was, "I'm not surprised. Just another example of Jerome County's gunsmoke style justice, remember the Melvin Wright thing."

## **EXHIBIT F**

Joa. C. Blough  
622 Highland Rd  
Jerome, Idaho  
83338



Mr. Philip Becker  
Jerome County Judge  
300 North Lincoln  
Jerome, Idaho  
83338

ITEM # 5 A  
TB  
10-4-17

## **EXHIBIT G**

Dear Judge Becker,

Sir, I am writing this letter to you because I believe you should know the truth about some of the things that happened the day my mom died & the truth about some of the things that I was told to say & told not to say. I believe my mom would want me to tell the truth about these things. None of this is easy for me because I loved mom. She was my best friend & I feel lost & alone without her.

I am not sure if I am supposed to be writing you like this with you being in charge of the court proceedings with Jamil & my mom being shot. It's just that I keep having bad dreams about all of this & I can't talk to anyone about this, even my sister. Everybody I know seems to be mad all the time. I know that they are all still very mad at Jamie & they all tell me I should only do & say what the prosecutor & Mr Carr tell me to do. But I believe you should know that some of the things in my statements to the

police were not all true.

On the day that this all happened I was pretty shook up because my mom had just been shot & because there were so many people asking me too many questions.

When I wrote out my statement on the day it happened I was told by an officer, I think his name is Driesal, to only say certain things so that my statement wouldn't be confusing & I do not recall everything that I said in my statement that day but I do remember that officer Driesal told me to say certain things that were not really true. One thing I remember is when I wrote down the time that I woke up that morning. Officer Driesal told me to write down a specific time which I knew was not true because I did not know what time it was when I woke up. It has never been like me to look at the clock when I wake up. I just wrote down what officer Driesal told me to say.

Also I remember that Tif is the one who said something about the horses. What I told

officer Oriesal is that after mom woke up that morning I remember her asking Jamie to go out + check on our horse that had been to the vet a few days earlier.

Before going outside I remember that Jamie tied a new white windrag around my neck + he kissed my forehead + he told me that the wrangle horse was waiting on me. Jamie would always tell me that when I would oversleep.

Before Jamie went outside to check on the horse mom came back to my bedroom + gave me a big box wrapped in decorative paper. When I opened the box it had a new 22 rifle in it. That was my graduation gift from mom + Jamie. After I told them thank you Jamie went outside + mom went into the bathroom to take a bath. After mom got dressed she told Tif + me that she was going outside to help Jamie with the horses.

I remember telling Officer Oriesal that when Tif + I first heard mom screaming I could hear her yelling for Tif. At

that time I was still in the bath tub. It was just a few seconds later when we heard the gunshots. That's when Tiffi came running in the bathroom & she screamed at me to get out of the tub & get my clothes on. When I had gotten dressed Tif grabbed my new 22 rifle that mom & Jamie had just given to me that morning. Tiffi gave me one of mom's 22 pistols & then she took me outside with her.

When we got outside I followed Tif over behind the sheep wagon which was right across the driveway from the barn. We could see mom in the alleyway by the feed bins but I did not see Jamie. I could only hear his voice. I remember I heard Tif shoot the rifle while we were behind the sheep wagon. I remember this because it startled me so much that I accidentally fired mom's pistol which also scared me. After that I asked Tif what was going on. That's when she told me mom had taken Calamity Jane with her when she went outside to help Jamie with the horses. Calamity Jane is what we call one of



mom's 22 rifle when I told this to officer Dreesal that day he told me he would make a note of it but he told me it wasn't necessary to state every little thing in my statement.

I also remember that when I finished my statement that day Officer Larry Webb came to see us at grandpa's house a few days later when he told me that he needed to talk to me again because he said I had forgotten to write down some important things in my statement. Officer Webb told me that I had forgotten to put down the part about hearing more shots that day after Tiffi & I had went back into the house. Officer Webb told me to write out another statement saying I had heard 6 or 8 more shots while Tiffi & I were in the house changing our clothes. I remember I had to sign another statement when Officer Webb told me to write that down even though I knew it was not true.

One other thing that bothers me is something Marc Hauss the new prosecutor from Boise had told us to do. Mr. Hauss has told us

that we need to get rid of  
moms Calamity Jane rifle. I don't  
understand why he would want  
us to do that but grandpa + me  
+ uncle Jimmy we all went out  
to the El Rancho property last  
week + we hurried moms rifle  
out there behind the potato  
cellar where we used to feed the  
horses. Uncle Jimmy wrapped  
moms rifle in an old blanket  
+ hurried right behind the cellar  
just a few feet from the place  
where he had thrown some of  
moms other things in the crawl  
space at the back of the potato  
cellar a few weeks after the day  
my mom died.

That's the stuff we told  
Duane Brown + officer David about  
last then. Everybody told me not  
to say anything about Uncle Jimmy  
throwing those things away in the  
crawl space. But Mr. Becker I know  
that this is not right + I hope that  
I am doing the right thing by  
telling you these things.

Can you please call or write  
to my grandpa + talk to him  
about this stuff? Because I know  
he is a good man + if he is doing  
anything bad or wrong its only

because he is so mad at  
Jamie for what happened to  
my mom.

Jira Arbaugh  
Halman  
September 6, 1989

Mr. Becker,

I am in Bureau Idaho for  
a cowboy benefit & street dance  
where Pinto Bennetts band is providing  
the music. Pinto Bennett knew my  
mom, & me & Tif for a long time  
ever since we lived at Smiths  
Prairie. I talked with Pinto about  
the things I have told you in  
this letter & he is the one that  
convinced me to write you.

Mr. Becker, I am 19 years old now  
& I need to tell you the truth about  
the things in this letter. If you  
need to talk with me about these things  
you can reach me at 224-4070. That's  
my grandpa's phone number. I will be  
back in Jerome early next week.

My Aunt Margene, mom's sister can  
also tell you about this stuff because  
she was also there when Mr. Haus told  
Uncle Jimmy & grandpa & all of us to  
get rid of mom's rifle.

## **EXHIBIT H**

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

|  |   |                                  |
|--|---|----------------------------------|
| JAMI DEAN CHARBONEAU,                    | ) |                                  |
|  | ) |                                  |
| Petitioner,                              | ) | Case No. CV-2011-638             |
| v.                                       | ) |                                  |
|  | ) | <b>AFFIDAVIT OF FREDERICK R.</b> |
| THE STATE OF IDAHO,                      | ) | <b>BENNETT</b>                   |
|  | ) |                                  |
| Respondent.                              | ) |                                  |
| <hr style="border: 0.5px solid black;"/> |   |                                  |

|                |     |  |
|----------------|-----|--|
| STATE OF IDAHO | )   |  |
|                | :ss |  |
| County of Ada  | )   |  |

FREDERICK R. BENNETT, Being first duly sworn upon oath, deposes and says:

1. Affiant is sixty-three (63) years old, a long-time resident of Idaho, currently residing at 9934 Waller St., Hammet, Idaho, and is a professional musician by trade, known as Pinto Bennett.
  
2. Affiant has been familiar with and a friend of Petitioner and his mother, Betsy Charboneau, over the past many years.

3. Affiant was also familiar with and a friend of Marilyn Arbaugh, deceased, and her daughter, Tira Arbaugh, also deceased, in years past.

4. Affiant has been shown a handwritten letter purportedly written by Tira Arbaugh, dated September 6, 1989, addressed to Judge Becker (Exhibit L to the pending Petition for Post-Conviction Relief in the above matter).

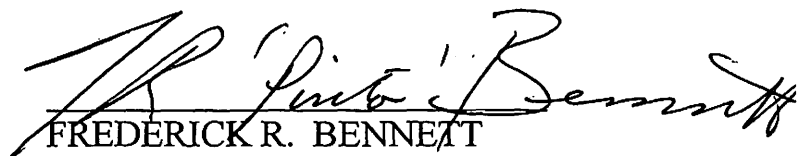
5. Affiant is the "Pinto Bennett" referenced on page 7 of said letter.

6. Affiant does recall a conversation with Tira Arbaugh in the summer of 1989 during a break at a street dance in Bruneau, Idaho, when Tira Arbaugh stated that she was upset and disturbed about various untruths pursued by the police and prosecutors concerning the prosecution of Petitioner.

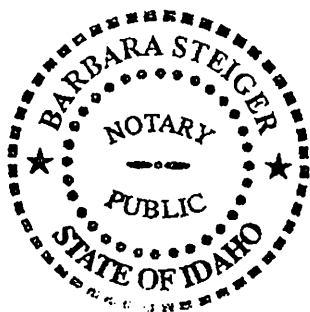
7. Affiant did advise Tira Arbaugh to tell people about these untruths and suggested that she write a letter to the presiding Judge.

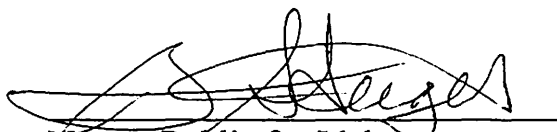
8. Affiant is also familiar with the rifle referred to in Tira's letter as "Calamity Jane". Marilyn Arbaugh was proud of this gun and personally displayed it at Affiant's bar in Bennett, Idaho, prior to her death in 1984.

DATED This 1 day of September, 2011.

  
FREDERICK R. BENNETT

SUBSCRIBED AND SWORN To before me this 1 day of September,  
2011.

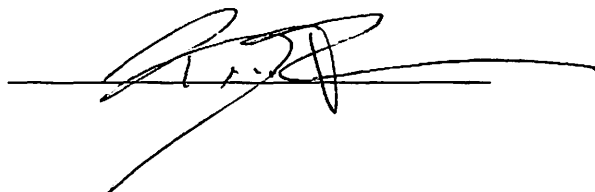


  
Notary Public for Idaho  
Residing at: Boise ID

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I served a true and correct copy of the foregoing document, by depositing the same in the U.S. Mail, postage prepaid, this 25<sup>th</sup> day of October 2011, upon the following:

Jerome County Prosecuting Attorney  
300 N. Lincoln, Room 307  
Jerome, ID 83338



## **EXHIBIT I**



3/16/70

Date July 1st 1984 Page No. 1

STATEMENT OF:

I woke up this morning about 11:00 this morning mom woke me up. She kisses + I woke up. She had brought me home some western horse magazine + she took a bath. As soon as she got out I got in. I was reading the magazine in the bathtub + I heard mom scream and I heard a bunch of rustling out of the door. About 10 min before I heard her scream she had come in the house and asked us if we had let the horses into the other corals + then she went outside. After I heard her scream Tif came into the bathroom + screamed for me to get out of the bathtub + get dressed. She had already called the police. I got dressed + ran outside. Tif told me to stay behind sheep wagon. I could hear Jamie in the barn very little. Then I ran back into the house + changed clothes while Tif + the Keeps to the truck. We ran back outside.

EXHIBIT "J"

Tina Arbaugh

STATEMENT OF:

And waited for Jamie to  
leave then Tip ran into the ally  
of the barn to mom. I got there  
right after Tipfi & Tip had mom  
in her arms. She pulled back her  
shirt & she had about 4 or 5 bullet  
holes in her chest. She was bleeding  
from her mouth & nose. I touched  
her cheek & then ran out of the  
barn to call the police. I could hear  
Tip crying & screaming. By the  
time I got through to the police  
I was too shocked up to talk & hung  
up. I ran outside and Officer  
Pierce was up the lane. As soon  
as I saw him I ran to the phone  
I called Mike Johnson & then Mary  
& Jim Arbaugh. Then I ran back  
to mom.

T.R.A.

T.R.A.

T.R.A.

T.R.A.

Dina Arbaugh  
Hallman

STATEMENT OF:

While we were dressing we  
saw about 5 more shots.

T.R.A.

T.R.A.

T.R.A.

T.R.A.

Lisa Allbaugh;  
Halman

PAGE 3 OF 3 251



It's a Boy

Date of birth [REDACTED]

Time of birth 7:44 am

Weight 7 lbs 1 oz. Length 20 inches

Color of eyes Blue Color of hair Black

Blood type \_\_\_\_\_ Diagnosis \_\_\_\_\_

Rh Factor \_\_\_\_\_

Distinguishing characteristics He has his  
daddy's cleft chin, and looks  
alot like his sister [REDACTED]

flag

TB - 10-13-2011



President of the U.S.A. President Bill Clinton

Most popular singers Jim Mcgraw

Mom and Dad's favorite album Counting Crows

Songs at the top of the charts Jim Mcgraw - Not a moment to soon

Latest dance craze Country Line Dancing

Best movies Legends of the Fall

Popular movie stars Brad Pitt

Popular t.v. shows Chicago Hope

Best selling books \_\_\_\_\_

Fashion trends Gangster clothes + Western

Popular exercises Mt. Biking + Outdoorsports

Sports heroes Chiceel O'neil

Popular cars and prices Grand-Am \$15,500<sup>00</sup> + Chevy Truck \$24,000<sup>00</sup>

## Some prices today

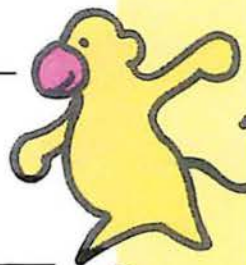
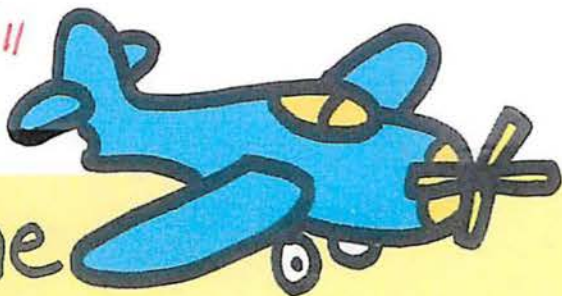
One dozen eggs \$1.09 doz. One loaf of bread 99¢

One quart of milk \$1.25 \$2.25 gal One cup of coffee 50¢

Cost of movie in theater \$5.50 per person

One record album \$8.00 \$15.00 Japco

plane



When and where labor began At Home



We left for the hospital at 2:30 pm a.m./p.m.

Name and location of the hospital St. Benedict's

Jerome, Idaho

The labor lasted 17 1/2 hours

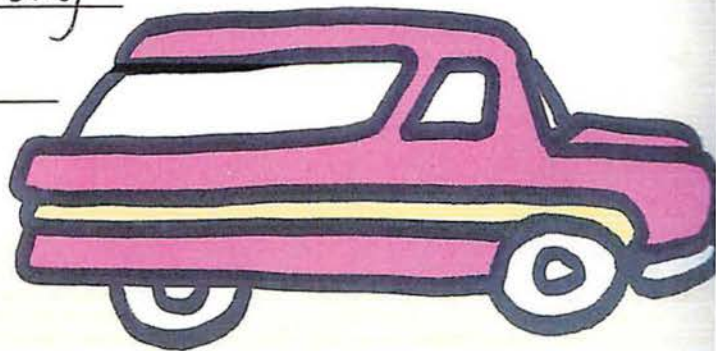
Delivery lasted 10 min.

Who delivered the baby Dr. Lorain Jansen

Nurses attending Sister Janet + Linda

Special memories After a very long labor I  
couldn't wait to see you so I pushed you out  
fast. You were blue, Daddy cut the cord  
While Grandma Griggs + Aunt Liffi watched.  
Daddy was so proud of you he wouldn't  
hardly put you down long  
enough for the nurse to  
look after you.

♥ Stationwagon

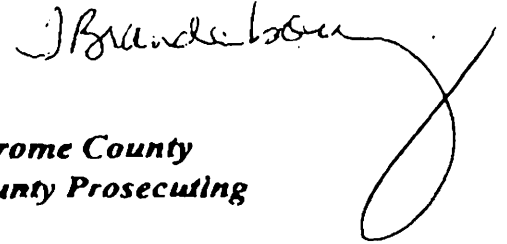




## **EXHIBIT J**

CV 2008-1342

1-22-09

**Sworn Statement of Elizabeth Miles**

***I am writing this statement at the request of the Jerome County Sheriff, Eliza Hall and Dan Adamson, the Jerome County Prosecuting Attorney.***

***The information I am providing here is of my first-hand personal knowledge about things I saw and heard.***

***After viewing a newscast on television about the shooting and death of Marilyn Arbaugh and the arrest of Jaime Charbonneau. I called the Jerome County Sheriff's Department to confirm the news reports were true. I was shocked to hear about this because I had just seen both Jaime and Marilyn together, one day last week, it was Thursday or Friday afternoon.***

***Sandy Johnston a friend and I were traveling through Hagerman on our way to Buhl. We stopped at Wilson's Club a bar to use the restrooms and get something to drink. When we went into the bar we saw Marilyn and Jaime sitting together at a table. I knew who Jaime was but really didn't know him. Marilyn and I had been friends for a couple of years. I had met her at a dance at Smith's Prairie. Where she lived with her two daughters.***

***I did not know about Marilyn's relationship prior to this time, Marilyn told me she and Jaime had been married for about a year.***

***We all played a few games of pool and drank a few beers. Then Marilyn told me that she was looking for a .22 rifle to buy for a gift for her youngest daughter Tira. I suggest that try the local hardware store there in Hagerman. Later that same day we all went to the hardware store together, Marilyn, Jaime, Sandy and myself.***

***I was with Marilyn when she asked the store if he had any .22 rifles that would be suitable for a teenage girl to learn to shoot with.***

***I remember Marilyn handling a rifle that the man had given to her and I also remember Marilyn asking the man if he had any gift wrapping paper.***

***I also remember that Marilyn got money from Jaime. While we were in the store, I saw give the money to the man.***

***I did not see Jaime handle a rifle or even speak to the man in the hardware store.***

***After Marilyn had finished speaking to the man in the store we all left.***

***We walked back to the bar where Sandy's pick up was parked. Sandy and I said good by to Marilyn and Jaime. Then we both got back in her pick up and drove on to Buhl.***

***I swear on my oath that this information that I have provided here true.***



**January 8, 2009**

**Elizabeth Miles**

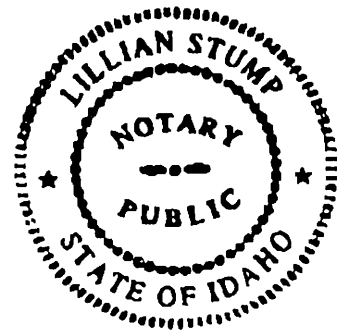
**County of Elmore**

**State of Idaho**

**I have been a resident of Idaho for 53 years and these statements are true.**

Elizabeth Miles  
January 8, 2009

Witnessed to and return date  
is 8th day of January 2009 LS.  
Lillian Stump  
Notary Public  
Lillian Stump  
43 W. State St. Boise, Idaho  
Id.  
83623  
expiration 05-27-2014



## **EXHIBIT K**

Friday August 10<sup>th</sup> 1984; Had a visit from Jim Coakley.

(My STATEMENT of what happened on July 1<sup>ST</sup> 1984.)

Jim Coakley, Golden Bennett's investigator came over to the jail in Jerome today to speak with me about what had happened on July 1<sup>ST</sup> AT "EL-RANCHO 93". MR. Coakley also asked me if I would allow him to hypnotize me. MR. Coakley said it would help me to recall everything more clearly. MR. Coakley said that he and MR. Bennett had discussed it and they thought unless I was hypnotized I would never remember everything.

MR. Bennett I am not really comfortable with the idea of being hypnotized. Right now I am really confuse and in disbelief of all that has happened. I know that you believe in this hypnotic stuff and I want to cooperate with you but this hypnotic stuff goes AGAINST all my religious beliefs and I need time to come to grips with all of this.

I will however do as MR. Coakley requested and write down everything that I can recall about the events of July.

As I told you and MR. Coakley when you came to see me last week me and Marilyn had been seeing one another off and on even though we were no longer living together.

We had been out on dates in the weeks and months prior to this tragic ordeal. You and Mr. Coakley both seem convinced that I am confused about what I have told you I recall about what happened.

Maybe my memory of those events is a little distorted as you suggest Mr. Bennett, but this is what I recall.

I went to the ranch with the 22 rifle which Marilyn and I had picked out as a graduation present for Tira Marilyn's youngest daughter. I also <sup>had</sup> the gift wrapping paper with me, Marilyn had asked me to pick some up.

I spent a couple of nights with Marilyn, she wanted me to check on the horses, in particular a stud horse colt which had just recently been cut. Marilyn was concerned about infection.

I gave the 22 rifle and the gift wrapping paper to Marilyn. I did not see the rifle again until Sunday morning when all of this happened. Marilyn had come out to see me early that morning, on that Sunday morning July 15<sup>th</sup>, in the barn area where I had been sleeping. Marilyn brought me some coffee and some pop tarts for breakfast.

We spent a short time together that morning, it was during that time that Marilyn told me that she was going to tell Tiffy and Tira that I was there and we were going to surprise Tira with the 22 rifle.

Marilyn left and went back into the house, she returned about 10 or 15 minutes later. This time she had the rifle and she was wearing her holster. She also had her back pack. Marilyn used a brownish color small back pack to carry all of her feminine things in things like make up, lotion, powder and she almost always had a pistol in her back pack.

When Marilyn came out to the tack room the second time that morning, I'm not sure what time it was although the sun was up pretty high so I would guess that it would have been at least 8:30, anyway when Marilyn came back out the second time she was carrying the 22 rifle as I stated. Marilyn told me that she wanted to take the girls Tiffy and Tira to a place where Tira could shoot her new rifle.

I said OK. I never had any indication of what was about to happen a moment later. Suddenly Marilyn turned and pointed the rifle right at me.

WAS STANDING in the front part of the tack room which is located just inside the front portion of the alleyway. Marilyn had walked a few feet past me down the alleyway when she came back out to the barn and tack room area. She was about 3 or 4 feet away when she turned and pointed the rifle at me. Stunned and in shock and overcome with fear, I couldn't believe this was happening again. As you know Marilyn had shot me several times with one of her 22 pistols, just a few months prior to this incident. At the same instance when Marilyn had pointed the rifle at me "siggy", Marilyn's German sheppard dog walked between us and Marilyn tripped over the dog. At that instant I instinctively reached out and grabbed for the barrel of the rifle. Though I do not know how I was somehow able to grab the barrel of the rifle. With the barrel in my hand I ducked and at the same time raised my arm pointing the rifle upwards and away from my head. As I did so I heard a shot go off, maybe more than one shot, anyway, I then began trying to wrestle the rifle away from Marilyn.

As we both struggled for the rifle Marilyn began to yell for Tiffy her oldest daughter. I finally managed to get the rifle away from Marilyn. As soon as I did so Marilyn turned and started running down the alleyway, away from the back room and front entrance doorway. Marilyn was still yelling for Tiffy as she ran down the alleyway. Marilyn had gone only a short distance down the alleyway when she turned back towards me, now facing me again. Marilyn pulled something from inside of her back pack when she dropped her back pack she lifted the object she had taken out of her back pack and pointed it at me it was a pistol. About that same time I was distracted by a noise behind me it sounded like a slamming door when I turned around to see what the noise was I saw Tiffy coming out of the house carrying what looked like a pistol. I was then startled by the sound of a gun shot. When I turned back around in Marilyn's direction another shot rang out. There was a post just to the side of where I was standing so I quickly moved over behind it for protection.

I soon realized that I was trapped between Marilyn who was shooting at me, and Tiffy who I also thought sure had a gun. I didn't know what to do and I panicked. I remember telling myself that there was no way I was going to go out the front entrance doorway and put myself in danger of being shot by Tiffy because I knew I could never shoot at a teenage girl. Desperate and scared, without even thinking I started shooting the rifle from my hip. I never actually aimed the rifle in the direction of Marilyn. After I had fired the rifle there was a sudden silence. After a few seconds I looked around the post, which was all that was between myself and Marilyn, in the direction of Marilyn. When I did I could see that she was on her knees with her head and body still upright. Marilyn was looking towards me. The pistol she had been shooting at me was on the ground in front of Marilyn. Seeing this I ran down to where Marilyn was and I remember we spoke to each other though I do not remember exactly what we said. A few moments later I heard something behind me and I turned around to see Tiffy standing in the

page - 6 - of - 8



entrance doorway. At that time I could clearly see a pistol in Tiffy's hand. I told Tiffy to go call an ambulance for her mother. Marilyn told Tiffy to do as I told her.

I realized that Tiffy would also most likely call Marilyn's father Jim Arbaugh too and I also knew that Jim Arbaugh had a lot of guns and I knew if he got there before the police did another gun battle might erupt. I said as much to Marilyn and then I walked to the back door of the Alleyway.

I stood outside the back door of the Alleyway for a few moments not knowing which way to go or what to do. I wanted to wait for the police but I was afraid that Marilyn's father would show up first. After a short time I heard voices. When I looked back in the doorway down the Alley in the direction where I had left Marilyn I could see Tiffy there with her. They were talking to each other but I could not make out what they were saying. I then looked over at the highway and saw a vehicle traveling at high speed towards the "El Rancho 93". This caused me to panic even more so I ran down to a low spot near a hay field about 200 yards from the barn where Marilyn and Tiffy were.

page - 7 - of - 8 -

I stood in that location near the hay field until I seen a police car drive to a location just a short distance from me. I then whistled and waved my arms to attract the officers attention. When the officer's approached me, there were two of them, I told them where the rifle was and then they took me into custody.

Golden I swear to you that this is what happened that day out there.

Please contact the "Obenchain" girls as soon as possible to confirm my story. Valery Obenchain was in the Alley bar the same night Marilyn and I were there just a few nights before all this happened. Please investigate everything you can to prove my story. I am awfully scared.

Sincerely,

Laimi Dean Charbonneau  
Laimi Dean Charbonneau

(Jerome County Jail)

August 12, 1984

## **EXHIBIT L**

WILLIAM LUTHER LAMBERT / General / August 23, 1944  
de Camp Court 2, Joliet  
300 North Lincoln  
Joliet, Illinois 61733

To Mr. Bennett / J. C. McINTYRE - JANE

Mr. Bennett

Today when you did your secretary came here to  
The jail to see me. You told me that you would  
send my letter that I had written. As Mr. Conkley  
asked me to write describing my version of  
The events that took place on the day of the  
incident. One thing that I forgot to say in  
my letter is that as we were told me if they  
were found mandatory. I told the men that  
I had taken away from her. Please ask them if  
ELZA HALL if they would it.

This is a diagram of the emblem that is  
on the side's first of military rifle. That's the  
rifle that she brought back out to the kitchen.  
The rifle that she tried to shoot me with as  
I explained to you. When the police arrived  
at the scene I whistled to those who were  
to let them know where I was and I told them right then  
that the rifle I had was a few feet away on the ground by the fence.  
I had placed the rifle up against the fence so I could use  
my hands to whistle. I told them that the rifle had fallen down by the fence.

Please Conkley  
interview Ann Hoot  
with a plastic bag  
and speak with the  
Oberlinia family?  
Vernie and Ray.  
Thank you.  
J. C. McINTYRE

## **EXHIBIT M**

Jaimi Dean Charboneau, #22091  
ICI-O, C-2 / C-15  
Hospital Drive North, #23  
Orofino, Idaho 83544

Greg S. Silvey, Attorney  
P.O. Box 956  
Kuna, Idaho 83634

January 19, 2006

Subject: The Brief you filed in the Idaho Supreme Court dated:  
January 12, 2006, Docket No. 32120.

Dear Greg,

I am in receipt of the Brief that you recently filed in the Idaho Supreme Court on my behalf. First let me state that I appreciate the work product that you have produced in preparing my appeal. I do, however, need to address a couple of issues that I discovered while reading the brief.

The first issue is found on page no. 1, in paragraph no. 2, in sentence no. 6 and, no. 7, you stated as follows: " However, Mr. Charboneau asserted that while he had shot Marilyn in self defense with a .22 rifle..." Greg, I never stated that I had actually shot Marilyn. What I did say from day one is that after Marilyn had tried to shoot me, again, with the same .22 rifle that she had shot me with in a previous incident that occurred a few months earlier in Lincoln County. When she tried to shoot me with her .22 "Calamity-Jane" rifle on July 1, 1984, I had managed to get the rifle away from her when she tripped over our dog "Siggy", who had stepped in front of Marilyn as she was walking towards me with that rifle leveled at me. When I got the rifle away from Marilyn she started yelling for her daughter Tiffanie as she was running down the feedbin Alleyway. A few seconds later Marilyn was shooting at me again with one of her .22 pistols.

Letter to Greg Silvey: (1)

Marilyn owned lots of guns. She even had pet names for them.

After Marilyn had started shooting at me with the pistol I stepped behind a corner post which was the only thing between myself and Marilyn. I was prevented from going out the Northend Alleyway door because by that time I could see Tiffanie at the sheepwagon and I could see that she also had a gun. The sheepwagon was in a direct line from the feedbin Alleyway. Being shot at from both sides and with no way out I admitted that I fired the .22 rifle from my hip around the post. I did not aim the rifle at anyone. That .22 rifle, Marilyn's "Calamity-Jane" .22 rifle was the only gun that I touched or handled during that incident on July 1, 1984. Again, Greg, Marilyn was alive and speaking to me the last time that I seen her on that day.

I just thought that I should clear that up for you.

Greg, I am concerned about the fact that Judge Butler was never actually involved in my case and, he can only rely on the very complicated and confusing record could easily mislead anyone unless they had the benefit of being personally involved or gaining full insight from someone who was personally involved. To illustrate my point I direct your attention to page no. 19 of the brief you filed, in the last paragraph the first sentence quotes Judge Butler as follows: "The evidence at trial clearly indicated that Marilyn Arbaugh died from shots to the chest, and that bullets recovered from the victim were matched to the Remington Rifle, which the petitioner has admitted to firing." Greg, the only gun that I admitted to having handled on July 1, 1984, when Marilyn was shot, was her .22 rifle the same rifle that she had shot me with previously in Lincoln County. That .22 rifle had Marilyn's name or initials, I can't recall which, engraved above the inscription "Calamity-Jane". That was engraved in the wooden stock portion of that .22 rifle. Doesn't it stand to reason that if that rifle was this Remington Rifle that Judge Butler refers to from the records he has read which refer to a Remington Rifle that "Marc Haws" the trial prosecutor had presented as evidence

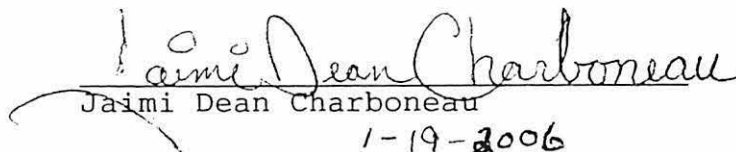
Letter to Greg Silvey: (2)

at my trial, wouldn't it stand to reason that they would have mentioned in their description of that rifle that it had Marilyn's name and "Calamity-Jane" engraved in the stock? Also, why didn't anyone allow me an opportunity to view this "Remington Rifle" so that I could have confirmed or denied whether or not it was the rifle that I had handled on July 1, 1984? If Judge Butler would have had further proceedings as the Idaho Supreme Court directed him to do when they reversed and remanded my case back to the District Court all these questions could have been answered.

Greg, with all the new information that is slowly coming to light in my case I now have to wonder whether the Rifle that I did admit to having handled on July 1, 1984 was ever processed in the proper chain of custody. Could that rifle also be hidden in the attic of the Jerome County Courthouse? I'm not sure if you are aware of what "Tira" had told mother a couple years after my trial when she was married to my brother "Jimmy". What "Tira" had told mother is that "Marc Haws" had told her to get rid of her mother's rifle. At the time that Marc Haws told that to "Tira" she was only thirteen years old. "Tira" told my mother that she burried the rifle somewhere at the El Rancho 93.

Before I close I want to express my sincere gratitude for all the hard work that you have done for me. It's good to have someone with integrity working for them. Thanks Greg.

Sincerely,

  
Jaimi Dean Charboneau  
1-19-2006

Letter to Greg Silvey: (3)

cc: file



BRIAN M. TANNER  
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ISB #7450

Attorney for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2011 OCT 25 AM 11:08

Michelle Emerson  
CLERK  
BY   
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

|                        |   |                                  |
|------------------------|---|----------------------------------|
| JAIMI DEAN CHARBONEAU, | ) |                                  |
|                        | ) |                                  |
| Petitioner,            | ) | Case No. CV-2011-638             |
| v.                     | ) |                                  |
|                        | ) | <b>RESPONSE TO NOTICE OF</b>     |
| THE STATE OF IDAHO,    | ) | <b>COURT'S INTENT TO DISMISS</b> |
|                        | ) | <b>PURSUANT TO I.C. §19-4906</b> |
| Respondent.            | ) | <b>AND REQUEST FOR</b>           |
|                        | ) | <b>EVIDENTIARY HEARING</b>       |

COMES NOW The above-named Petitioner, by and through his attorney of record, BRIAN TANNER, and hereby submits this RESPONSE TO NOTICE OF COURT'S INTENT TO DISMISS PURSUANT TO I.C. §19-4906 AND REQUEST FOR EVIDENTIARY HEARING. This Court issued its NOTICE OF COURT'S INTENT TO DISMISS PURSUANT TO I.C. §19-4906 ("NOTICE") on July 1, 2011. Since then, Petitioner has filed an AMENDED PETITION FOR POST-CONVICTION RELIEF ("AMENDED PETITION"), which is intended to address the Court's directive to express how any new information would matter now (NOTICE, p. 3). Moreover, Petitioner will address those specific concerns of the Court raised in

the NOTICE, as well as others anticipated given the filing of the AMENDED PETITION. Finally, for the reasons cited herein, Petitioner hereby requests that this Court set the matter for further proceedings including an evidentiary hearing and attendant discovery.

**SUCCESSIVE PETITIONS AND THE REQUIREMENT OF  
NEWLY-DISCOVERED EVIDENCE**

The record here and in prior post-conviction proceedings brought by Petitioner clearly establishes that the pending AMENDED PETITION is successive to other prior efforts to collaterally attack Petitioner's underlying conviction and sentence. Thus, as a preliminary matter, Petitioner may proceed if this Court "finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application" (I.C. §19-4908; *Casper v. State*, Case No. 36042 (IDCCA)(2010)).

Petitioner meets this initial burden. He has supported his AMENDED PETITION with new evidence which "unearths 'claims which simply [were] not known to the Defendant – within the [one-year] time limit, yet raise important due process issues'" (*Charboneau v. State*, 144 Idaho 900, 904, 174 P.3d 870, 874 (2007)). Specifically, the new evidence is the 'packet' of materials given to him by Correctional Office Hiskett on March 18, 2011. Petitioner concedes that some of the information in the packet is not new and this aspect of the case will be discussed later under WAIVER, TIMELINESS AND PRIOR ADJUDICATION. Nevertheless, all of the packet materials unearth a rather grotesque conspiracy to intercept, seize and confiscate Petitioner's mail, including legal materials and information which could have exculpated the Petitioner of his current conviction.

This conspiracy transpired over several years and involved correctional personnel, as well as Deputy Attorneys General of the State of Idaho. The proof of this conspiracy is contained in the documentation found within the packet itself (Exhibits A through G to the AMENDED

PETITION). These electronic messages and handwritten note by and between correctional personnel Shedd and Unger constitute admissible evidence as they are admissions against interest under I.R.E. 804(b)(3). These correctional personnel essentially admit to a conspiracy to illegally confiscate Petitioner's mail at the direction of the State's prosecutors.

The conspiracy in issue here is a violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), which typically involves the failure (negligent or otherwise) to disclose evidence "favorable to an accused" and "material either to guilt or to punishment" (*Id.* at 373 U.S. 87). The test of a *Brady* violation is whether "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different" (*U.S. v. Bagley*, 473 U.S. 667, 682 (1985)). Moreover, when examining a *Brady* claim, "the question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence" (*Kyles v. Whitley*, 514 U.S. 419 (1995)). The same standards apply to undisclosed evidence at either the trial or sentencing stage.

Here, the *Brady* violation is far more egregious than negligent destruction or loss of evidence; it was the product of a deliberate conspiracy and bad faith. In addition, Marc Haws is not new to this problem; he was the subject of the *Brady* violation in *Paradis v. Arave*, 240 F.3d 1169 (9<sup>th</sup> Cir. 2001). The *Paradis* case is similar to this case in that in *Paradis*, Marc Haws concealed highly relevant and exculpatory evidence, which once discovered, led to a reversal of the conviction. Neither is the Idaho Department of Corrections ("IDOC") new to this problem as its attorneys, agents and employees have been significantly sanctioned by the Idaho Federal District Court and affirmed by the Ninth Circuit for deliberate confiscation of legal mail (*Puente*

v. *Vervon*, 255 F.3d 1118 (9<sup>th</sup> Cir. 2001). The *Puente* court specifically found that the confiscation of mail there was a product of IDOC custom and policy.

It has been clearly-established law that confiscation of mail may impair an inmate's constitutional right to access to the courts under the First Amendment (*Washington v. James*, 782 F.2d 1134 (2<sup>nd</sup> Cir. 1986)). The suppression by the prosecution of evidence favorable to an accused also violates due process when the evidence suppressed is material to either guilt or to punishment, irrespective of the good faith or bad faith of the prosecution (*Brady*, 373 U.S. at 87). Whether the suppression of evidence rises to the level of a constitutional violation requires the consideration of materiality and prejudice.

### **MATERIALITY AND PREJUDICE**

It is important to note that a post-conviction proceeding in Idaho may take the form of either a due process claim or an actual innocence claim or both as a basis for relief (*Rhoades v. State*, 148 Idaho 247, 220 P.3d 1066 (2009)). Petitioner asserts both claims in his AMENDED PETITION.

#### **(1) Due Process (*Brady* claim)**

With respect to a *Brady* claim, evidence is material if “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome (*U.S. v. Bagley*, 473 U.S. 667, 682 (1985)). The final determination of materiality is based on the “suppressed evidence considered collectively, not item by item. (*Kyles, Id.*, 514 U.S. at 436-37).

The United States Supreme Court has divided non disclosure of exculpatory evidence claims into three categories. The three categories involve the discovery, after trial, of

information which had been known to the prosecution but unknown to the defense. *United States v. Agurs*, 427 U.S. 97, 103, 96 S.Ct.2392, 2397 (1976). The first category of cases is typified by the case of *Mooney v. Holohan*, 294 U.S. 103, 55 S. Ct. 340, 79 L.Ed. 791 (1935), in which the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the prosecution knew, or should have known, of the perjury." *Agurs*, supra, 427 U.S. at 103, 96 S. Ct. at 2397. The Court's holding in *Mooney* and in subsequent cases applying *Mooney*, is that "a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. *Agurs*, supra, 427 U.S. at 103, 96 S. Ct. at 2397. This standard is a "strict standard of materiality not just because these cases involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process." *Id.* at 104, 96 S. Ct. at 2397. See also *Paradis v. State*, 110 Idaho 534, 538, 716 P.2d 1306, 1310 (Idaho 1986).

In other words, if it is demonstrated that that there is *any reasonable likelihood* that perjured testimony could have affected the judgment of the jury, the conviction must be set aside.

As mentioned above, the packet materials reflect an ongoing conspiracy to surreptitiously confiscate Petitioner's mail as of November 2004 and earlier (Exhibit A in the Amended Petition). It is unknown when this conspiracy began. There was an effort by correctional personnel Shedd and Unger to delete all old messages (electronic) and to fictitiously create a document showing Petitioner's receipt of the confiscated materials as Haws ordered (Exhibit A).

Consequently, Petitioner should be given the opportunity to discover the full scope of this conspiracy because it is apparent that the extent of the confiscation was much greater than that reflected in the packet documents.

Nevertheless, the “Charboneau mission” focused on two people: Larry Gold, former Jerome County Sheriff (deceased), and Tira Arbaugh (deceased). Mr. Gold authored two documents found in the packet. First, a letter addressed to Petitioner, dated June 3, 2001 (“letter”) (Exhibit D in the Amended Petition). Petitioner had, previous to March 18, 2011, received this letter and it has been used in prior post-conviction proceedings and is therefore not new evidence. However, Mr. Gold’s typed Sworn Statement (“Statement”) was unknown to Petitioner and is new evidence. In his Statement, Mr. Gold does express his conclusory beliefs that improprieties were committed by State agents in the prosecution of Petitioner similar to his beliefs expressed in the letter. However, Mr. Gold advises Petitioner of the confiscation of Tira Arbaugh’s letter (Exhibit C in the Amended Petition) by District Court Clerk Cheryl Watts; this portion of the Statement is new information. The Statement was presumably confiscated in November of 2001; it could have been used by Petitioner to uncover a corollary to the “Charboneau mission”, that is, the confiscation of mail from a critical witness, Tira Arbaugh, to the presiding Judge at an earlier, critical stage in the proceedings – re-sentencing.

The Idaho Supreme Court remanded Petitioner’s case for re-sentencing in April of 1989 (*State v. Charboneau*, 116 Idaho 129, 774 P.2d 299 (1989)). Regardless of whether Mr. Gold’s Statement is admissible now, the information therein could have been extremely beneficial to the defense in 2001 by uncovering the existence of Tira Arbaugh’s letter, dated September 6, 1989, and the disturbing revelations therein. She could have provided testimony supporting those revelations which go to the veracity of the State’s prosecution in several important respects,

which will be discussed later. In this context, the confiscation of the Gold Statement is a *Brady* violation, regardless of its admissibility of the Statement because it could have led the defense team to admissible evidence. Therefore, even though the Gold Statement and reference to the Arbaugh letter may be inadmissible now because of hearsay, the confiscation of it put the defense team at a substantial disadvantage in preparing post-conviction proceedings in 2001. If the evidence in issue would have led the defense to admissible evidence at that time, it is material. Clearly, it could have, as the Gold Statement, which specifically references the confiscation of the Tira Arbaugh ("Arbaugh") letter and is material under *Brady* and *Kyles* (*Id.*). The prejudice from the confiscation of the Gold Statement is obvious and revealed in the Arbaugh letter which Petitioner was prevented from developing prior to either's demise. The specifics of these revelations are discussed below.

The same analysis of materiality ability applies to the confiscated Arbaugh letter in an even more compelling way. This document is clearly new evidence and, like the Gold Statement, even if it is considered inadmissible hearsay evidence, confiscation of it is a *Brady* violation because the information contained in it could have led to admissible evidence.

With respect to prejudice, this letter is an expression of Tira Arbaugh's remorse and guilt over her involvement in a conspiracy with law enforcement officials to deliberately fabricate false evidence and conceal real evidence. First, she reveals that she suffers from bad dreams and believes her mother, Marilyn Arbaugh, would want the truth to come out (Exhibit A, p. 1 of Amended Petition). Then, Tira admits her witness statements (and subsequent testimony) contain knowingly-made false statements at the behest of investigating officers (*Id.*, p. 1,2). For example, she represents that she woke up at a certain time as instructed, but did not know if it was correct (*Id.*, p. 2). She represents that Jaimi (Petitioner) had contact with her before any

shooting (*Id.*, p. 3). She represents that her sister, Tiff, grabbed the new .22 rifle<sup>1</sup>. She also represents that Tiff told her that “mom had taken Calamity Jane”<sup>2</sup> (*Id.*, p. 4). She represents that Tiff shot the new .22 rifle (*Id.*, p. 4). Officer Driesal told her these things were not important to put in her statement (*Id.*, p. 4). She represents that Officer Webb told her to put in a second statement that she heard six to eight shots more while back in the house – this was false (*Id.*, p. 4). She represents that Marc Haws told her and the other family members to “get rid” of Calamity Jane, which they did (*Id.*, p. 5). Finally, she reveals that she talked to Pinto Bennett about the untruthfulness of the case brought against Petitioner and he advised her to write Judge Becker (*Id.*, p. 6). The authenticity of the Arbaugh letter is corroborated by Mr. Bennett (see AFFIDAVIT OF FREDRICK R. BENNETT, filed as *Exhibit H* in the Amended Petition and additional documentation filed as *Exhibits I* through *M* of the AMENDED PETITION) and therefore should be deemed trustworthy for purposes of this initial stage in the proceedings.

All of these revelations would have been beneficial to Petitioner in developing his case for re-sentencing as well as developing subsequent post-conviction proceedings as of September 6, 1989. If the sentencing court found some or all of these revelations true, it is highly probable that Petitioner would not have been sentenced to fixed life. For example, Petitioner has consistently admitted that he wrestled the Calamity Jane from Marilyn and shot at her in fear that she was going to shoot at him, which she had done previously. He left the scene with this gun and waited for the police (*Charboneau I* at pp. 133, 134). Petitioner readily admitted this fear of being shot to the arresting officers. The State’s theory was that Petitioner, in cold blood, murdered Marilyn after the initial volley of shots – thus, the significance of “six to eight shots more” in Arbaugh’s letter (p. 4). This is a new revelation to Petitioner as of March 18, 2011, and

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<sup>1</sup> This .22 rifle is the nylon Remington which the State maintained throughout the trial, was the murder weapon.

<sup>2</sup> “Calamity Jane” is the .22 rifle that Petitioner claims was the gun he wrestled from Marilyn Arbaugh and used to shoot toward her or near her.



had never been raised before. Likewise, Tira's details as to the concealment of the Calamity Jane (Exhibit G, p. 5) is also new information, even though rumors of this event came to his attention earlier. Likewise, the letter from Tira Arbaugh demonstrates that Petitioner was asked by Marilyn Arbaugh to "go out and check on our horse that had been to the vet a few days earlier," and that Jaime kissed Tira on the forehead before leaving the house. This statement refutes the State's position that Jaime was lying in wait or had any plans to kill Marilyn. These are but a few examples of how this new information from Tira's letter could have undermined confidence in both the conviction and sentence, particularly at the critical point in time when Petitioner was about to be re-sentenced. Recanted testimony, which is essentially what Tira's letter could have led to, would have been highly material to the sentence imposed (*Bean v. State*, 119 Idaho 632, 809 P.2d 493 (Idaho 1991)).

## **(2) Actual Innocence Claim**

To establish a prima facie case for an "actual innocence" claim, Petitioner "must show that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence" (*Rhoades v. State*, 148 Idaho 247, 253, 220 P.3d 1066, 1072 (2009))<sup>3</sup>. As outlined above, the astonishing revelations set forth in Tira Arbaugh's letter reflect a clear effort on her part to clear her conscience of a fraud forced upon her when she was thirteen years old. The letter, even though hearsay, is admissible under I.R.E. 804(b)(3) as a "statement against interest". Potential criminal charges would be perjury and obstruction of justice as a co-conspirator. A reasonable person in Tira Arbaugh's position (the declarant) would not have made these statements unless she believed them to be true.

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<sup>3</sup> Petitioner disputes that this standard is constitutionally correct under federal standards (see *Strickland v. Washington*, 466 U.S. 688 (1984)); however, the Idaho standard will be applied for purposes of this briefing.

Under the Rule, there may be a corroboration requirement, as Tira's statements in her letter tend to expose her to criminal liability and are offered to indirectly exculpate Petitioner. This corroboration requirement generally applies to a third-party confessor (see *State v. Meister*, 148 Idaho 236, 200 P.3d 1055 (2009)). However, for purposes of this stage in the proceedings, Petitioner will assume corroboration of Tira's letter is required.

Tira's newly-discovered letter and the specific statements inculcating herself in a conspiracy to fabricate the prosecution of Petitioner on first-degree murder charge is corroborated in two very important respects by the following. First, Tira Arbaugh maintains in her letter that it was her sister, Tiff, who had possession of and accidentally shot the murder weapon (.22 nylon Remington) in an attempt to defend her mother. This assertion is corroborated by Petitioner in his letter to his own counsel in August of 1984, shortly after the homicide (*Exhibit L* of Amended Petition). Petitioner verifies in this letter to his attorney, Golden Bennett, that he wrestled the Calamity Jane rifle from Marilyn, not the nylon Remington. Petitioner emphasizes this point in his letter to appellate counsel Greg Silvey in January, 2006 (*Exhibit M* of Amended Petition), which was confiscated and later found in the packet.

Second, Tira Arbaugh maintains in her letter that the prosecution's claim that there was a second volley of six to eight shots after she and her sister returned to the house was a lie. The alleged additional shots were the basis for the finding of guilt to first degree murder and the original death penalty (*State v. Charboneau*, 116 Idaho 129, 136 (1989)). However, Petitioner has always maintained that he only shot toward Marilyn a couple of times from the hip and behind a post, right after he wrestled the Calamity Jane from her (*Exhibit M*).

Notwithstanding any requirement for corroboration, it is clear that State agents were responsible for the concealment of highly useful information from a key witness who is now

dead. The State should, in no way, be able to take advantage now of this deceit by suggesting Tira's letter is not admissible. The conspiracies to confiscate and conceal this important document corroborates the assertions therein and this Court should assume them to be true.

Applying the standards for an Actual Innocence claim mentioned above is remarkably easy here. Given the truth of the assertions in Tira Arbaugh's letter, no juror would have convicted Petitioner of First Degree Murder if he was not in possession of the murder weapon. Likewise, no juror would have convicted Petitioner if Tira's claim of police and prosecutorial misconduct had come to light at trial. Moreover, no Judge would have sentenced Petitioner to a fixed life sentence if the truth of said claims had come to the attention of the sentencing court. These conclusions are *a priori*.

The potency of the concealed letter is evident based on the prolonged and coordinated efforts of Marc Haws, Dewayne Shedd and Officer Unger to conceal it.

Moreover, regardless of any corroboration requirement, I.R.E. 804(b)(3) "must be balanced with the constitutional right to present a complete defense" (*State v. Meister*, No. 30152 (IDCCR, 2007)). In reversing a judgment of conviction for murder, the U. S. Supreme Court explained the interplay between the evidentiary rule in issue and a defendant's Sixth Amendment right to present a defense:

The testimony rejected by the trial court here bore persuasive assurances of trustworthiness and thus was well within the basic, rationale of the exception for declarations against interest. The testimony also was critical to Chamber's defense. In these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.

*Chambers v. Mississippi*  
410 U. S. 284, 302 (1984)

#### **WAIVER, UNTIMELINESS AND PRIOR ADJUDICATION**

Petitioner understands that trial courts are generally loathe to re-open old cases. The State's interest in finality has appeal for many reasons. However, this interest must never stand in the way of fundamental justice. Petitioner has brought numerous post-conviction proceedings before; however, with the exception of ineffective assistance of counsel, at no time have the merits of Petitioner's post-conviction claims ever been adjudicated. The notions of waiver, untimeliness and prior adjudication have stood before this case like the Colossus of Rhodes.

For example, Petitioner, in his third PETITION FOR POST-CONVICTION RELIEF, did raise claims based on Larry Gold's letter (not Statement) and Tira Arbaugh's oral confessions that the prosecution directed her to remain silent on various aspects in the case. The Idaho Supreme Court remanded the case for consideration of these claims in *Charboneau v. State*, 140 Idaho 789 (2004). Jerome County District Court Judge Butler dismissed this PETITION on timeliness grounds, that is, Petitioner was one month late and on the basis that Tira's oral confessions and Larry Gold's letter were inadmissible hearsay. This ruling was affirmed in *Charboneau v. State*, 144 Idaho 900 (2007). This Court applied the same analysis in dismissing Petitioner's fourth post-conviction PETITION in May of 2009, which was not appealed. Petitioner had raised in this effort claims that Calamity Jane was buried, based again on Tira's oral admissions to Petitioner's mother. This Court deemed the matter duplicative and untimely.

These factual claims, plus the new ones cited above, have resurfaced here and the Court has already given notice of its intent to dismiss Petitioner's original PETITION on the same basis as before – untimeliness, etc. This Court is in danger of applying an erroneous standard which essentially would stand for the proposition that if a fact or issue or claim is once raised, all subsequent new facts, issues or claims remotely related to the old one are forever barred. This is not the law.

What is at issue here is a case of newly discovered information supporting claims that relate to prior claims. It is the newly-discovered evidence, namely the conspiracy to confiscate mail, that should be in focus – not the fact that this new evidence relates to old claims. This distinction was addressed by the Idaho Supreme Court in *Sivak v. State*, 134 Idaho 641, 8 P.3d 636 (2000) in the context of the more rigorous standards for successive post-conviction proceedings in death penalty cases (§19-2719):

The State advances three theories to support its contention that Sivak's petition is procedurally barred. First, it asserts that Sivak brought the identical issue before this Court in *Sivak II*. Thus, it contends, Sivak has waived this "claim for relief" under I.C. §19-2719(5) because the claim was advanced in a previous post-conviction proceeding. Second, the State contends that the letters were discoverable because the Ada County prosecutor had an open file policy, or alternatively, that the defense itself could have contacted the parole commission and the prosecuting attorneys of Idaho, Twin Falls, and Boise counties to discover what, if any, arrangements the Ada County prosecutor had made on Leytham's behalf. Third, the State argues that material in Leytham's pre-trial deposition made it clear that Leytham had an understanding with the prosecution and had received benefits for testifying. Even if the suppressed letters themselves were unknown, the State urges, the letters present material that is merely cumulative or impeaching, which is facially insufficient under I.C. §19-2719(5)(b) to support a successive petition.

...

**We reject the State's theory that Sivak has waived this claim for relief merely because he raised the issue in his first post-conviction petition. As Sivak concedes, this petition presents not a new claim but new evidence supporting an old claim. Applying this rule as the State requests would result in Idaho courts being unable to entertain evidence of actual innocence in successive post-conviction petitions, even where the evidence was clearly material or had been suppressed by prosecutorial misconduct. We must be vigilant against imposing a rule of law that will work injustice in the name of judicial efficiency.**

(*Id.* at pp. 646, 647)  
(Emphasis added)

The details of the plea agreement in *Sivak* (old claim) were known to Sivak in a pre-trial deposition in a prior proceeding. Thus, the new evidence of the plea agreement, undisclosed letters, was deemed cumulative. Here, Petitioner was not aware of the first-hand and new

information set out in Tira's letter and Gold's Statement until March 18<sup>th</sup> of this year. For example, Petitioner did not know of Tira's revelations concerning the absence of a second volley of shots or the possession of the murder weapon by her sister or the details of the buried Calamity Jane. In Idaho, a petitioner is not barred from bringing new evidence of old claims. The principals cited in *Sivak* were subsequently employed in *Pissuto v. State*, 149 Idaho 155, 233 P.3d 86 (2010), again in a capital murder case with its heightened standards..

Post-conviction proceedings are generally controlled by the Uniform Post-Conviction Procedure Act (UPCPA), I. C. §194901 to -4911. *McKinney*, 133 Idaho at 700, P.2d at 149. However, I.C. §19-2719 governs capital cases to the extent they conflict with the UPCPA. *Id.* "Any remedy available by post-conviction procedure. . . must be pursued according to the procedures set forth in this section and within the time limitations of subsection (3) of this section." I.C. §19-2719(4). Idaho Code §19-2719(3) states that "[w]ithin forty-two. . . days of the filing of the judgment imposing the punishment of death, and before the death warrant is filed, the defendant must file any legal or factual challenge to the sentence or conviction that is known or reasonably should be known." If the party fails to apply for relief within forty-two days of the imposition of the death penalty, that party "shall be deemed to have waived such claims for relief as were known, or reasonably should have been known." I.C. 19-2719(5)" The courts of Idaho shall have no power to consider any such claims . . . *Id.* Thus, **"In capital cases, a successive petition is allowed only where the petitioner can demonstrate that the issues raised were not know or could not reasonably have been known within the forty-two day time frame."** *McKinney*, 133 Idaho at 701, 992 P.2d at 150 (citing *State v. Rhoades*, 120 Idaho 795, 807, 820 P.2d 665, 677 (1991)). This is where I.C. §19-2719 differs from the UPCPA, which requires a waiver be knowing, voluntary, and intelligent. I.C. §19-4908; *Id.*

**Idaho Code §19-2719 places a heightened burden on petitioners to make a prima facie showing that the issues raised after the forty-two day time period were not known or could not reasonably have been known.** *McKinney*, 133 Idaho at 701, 992 P.3d at 150 (citing *Paz v. State*, 123 Idaho 758, 760, 852 P.2d 1355, 1357 (1993)). In addition to the prima facie showing, the claims must be raised "within a reasonable time" after they become known or reasonably could have become known.

The State argues this court has never stated that it would consider claims notwithstanding I.C. §19-2719. *Sivak*, the State argues, "merely stands for the proposition that a defendant can resurrect an old claim with newly discovered evidence if that evidence was not known or could not reasonably have been known when the first post-conviction petition was filed."

The State has properly interpreted *Sivak*. In *Sivak*, the State argued that the petitioner had waived a specific “claim for relief” under I.C. §19-2719(5) because the claim was advanced in a previous post-conviction proceeding.” *Id.* Nevertheless, this Court held that a petitioner can raise an old claim with newly discovered evidence, which is in line with I.C. §19-2719(5). Specifically, this Court stated:

**We reject the State’s theory that Sivak has waived this claim for relief merely because he raises the issue in his first post-conviction petition. As Sivak concedes, this petition presents not a new claim but new evidence supporting an old claim. Applying this rule as the State requests would result in Idaho courts being unable to entertain evidence of actual innocence in successive post-conviction petitions, even where the evidence was clearly material or had been suppressed by prosecutorial misconduct. We must be vigilant against imposing a new rule of law that will work injustice in the name of judicial efficiency.**

(*Id.* 233 P.3d at pp. 91, 95)  
(Emphasis added)

Thus, Petitioner is not barred from pursuing new information even if it relates to old claims. The statute which specifically addresses successive post-conviction petitions I.C. §19-4908 and a successive petition is not barred when some of the newly-discovered relates to old claims. This statute grants power to this Court to consider the AMENDED PETITION here because of new evidence raising new claims even though some relate to old claims inadequately raised. To dismiss the present AMENDED PETITION with no opportunity develop the claims would reward the State for significant constitutional violations.

#### **SUMMARY DISMISSAL AND STANDARDS FOR AN EVIDENCIARY HEARING**

Idaho Code §19-4906 authorizes summary dismissal of a petition for post-conviction relief on its own initiative. Summary dismissal in this context is the equivalent of summary judgment under I.R.C.P. 56. To overcome summary dismissal, the petitioner must present evidence making a prima facie case as to each essential element of the claim or claims (see *DeRushe v. State*, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009)). Thus, summary dismissal is permissible only when the petitioner’s evidence raises no genuine issue of material fact that, if

resolved in petitioner's favor, would entitle the applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted (see *Goodwin v. State*, 138 Idaho 269, 272, 61 P.3d 626, 629 (Ct.App. 2002)).

Petitioner has met his burden at this stage. The Court must liberally construe the facts in Petitioner's favor and draw reasonable inferences therefrom, pursuant to I.R.C.P. 56 (see *Griffin v. State*, 142 Idaho 438, 128 P.3d 975, 978 (Ct.App. 2006)). Applying these standards, this Court must conclude that Petitioner has raised genuine issues of material fact which establish that:

1. There was a conspiracy by State agents engaged in a *Brady* violation to intercept, seize and confiscate mail which the Petitioner could have developed to his significant advantage for re-sentencing purposes, as well as post-conviction proceedings;

2. There was a conspiracy by Jerome County agents to intercept, seize and confiscate a letter from a key witness to the presiding judge and material to Petitioner's conviction and sentence;

3. There is evidence from key witnesses that during the trial proceedings, police and prosecutors and witnesses engaged in a concerted effort to fabricate and conceal material evidence and falsely prosecute Petitioner.

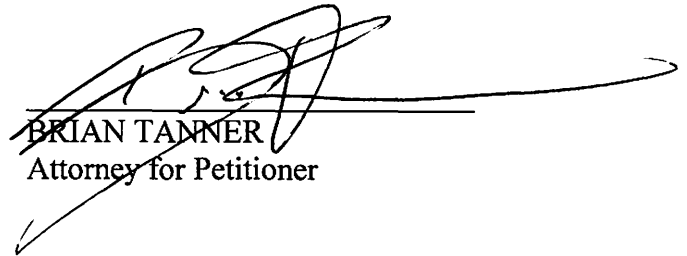
### **CONCLUSION**

The criminal justice system is an imperfect system administered by imperfect people and mistakes, errors and omissions are made. Not all of these defects render the system legally defective or unjust. However, there are times when the imperfections rise to a level that cannot be ignored.



This case presents, at this stage, one of the rare circumstances where the defects in the process were fundamental and a post-conviction evidentiary process is required to discern and resolve very disturbing and genuine issues of fact which, if true, demand relief.

DATED This 24<sup>th</sup> day of October, 2011.


  
BRIAN TANNER  
Attorney for Petitioner

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 28th day of October, 2011, I caused a true and correct copy of the foregoing RESPONSE TO NOTICE OF COURT'S INTENT TO DISMISS PURSUANT TO I.C. §19-4906 AND REQUEST FOR EVIDENTIARY HEARING to the following person(s):

Jerome County Prosecutor

☐ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☒ Hand Delivered



Tirza C. Delgado,  
Secretary

## **GENERAL AFFIDAVIT**

**STATE OF: IDAHO**

**COUNTY OF: ELMORE**

PERSONALLY came and appeared before me, the undersigned Notary, the within named TOM BERRY, who is a resident of ELMORE County, State of IDAHO, and makes this his statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are and correct to the best of his knowledge.

That your affiant is over 18 years of age and a resident of the state of Idaho. I am a privately contracted investigator. That I have thirty years of Law Enforcement experience that includes 10 years as a Felony Detective, 13 years as a Police Chief and the remainder as a Patrol Officer or Deputy Sheriff. That I have been retired from Law Enforcement since August of 2007.

On August 22, 2011, I was contacted by Betsy Charboneau, Mother of Jaimi Dean Charboneau. The purpose of this meeting was to discuss retaining me to conduct an investigation into certain aspects of the Criminal Case of Jaimi Charboneau where as he was convicted of First Degree Murder. I have not been retained to reinvestigate the entire case, but to look into possible new evidence and the

validity of that evidence for presentation to the court for any possible further Judicial review or action.

I have been conducting that investigation since that date to the present date. As a result of that investigation, I have found the following information, which I wish to inform the court of;

1. That on March 18th of 2011, Charboneau was confined in the Idaho correctional Institution-Orofino. That on that date Correctional Officer Mike Hiskett discovered a large envelope while cleaning out a file cabinet. The envelope had the words Legal Document and Charboneau's name on it. Hiskett delivered that envelope and content to Charboneau.
2. The contents of the envelope were inventoried at that time by Charboneau and Officer Hiskett. It was later given to Charboneau's attorney at the time, Greg Silvey. Mr. Silvey has since transferred the packet and contents to me.
3. I have attached a copy of an inventory I made upon receipt of the items, marked as EXHIBIT 1.
4. I began to investigate the contents of the Packet. The first item of interest was a letter, written and signed by Tira Arbaugh-Halman and dated September 6, 1989. It was addressed to Judge Becker but had apparently

been intercepted and withheld from further examination. This letter was item 14 on the inventory list. It is now marked EXHIBIT 2.

5. Exhibit 2 details Tira's concerns about being untruthful on her original Statement. Tira's has since died. On the week of October 10th, 2011 I had a number of interviews with Jim Griggs, Tira's Husband at the time of her death. I gave Mr. Griggs a copy of EXHIBIT 2 to for him to examine. I asked him if it was Tira's handwriting. Mr. Griggs examined the letter and told me that it did look like Tira's Handwriting.
6. Mr. Griggs then gave me three documents from a "Baby" Book that he said had Tira's Handwriting on them, and dated from 1995. Those three Documents have all been labeled EXHIBITS 3 through 5. They, along with a copy of Tira's original Police statement and EXHIBIT 2 will be given to a Handwriting Examiner for a determination as to the authenticity, when more time and funding is available. The Court will be advised of those findings when they are available.
7. Inventory items 7-C and 7-D are documents that appear to be internal email between IDOC Officer Lt. Unger and IDOC Paralegal Dewayne Shedd. They are marked EXHIBITS 6 AND 7. They discuss the withholding of legal and other documents from Charboneau on behalf of Prosecutors Mark Haws. Inventory item 4 is a hand written note signed by Shedd and also discusses the withholding of documents from Charboneau as per

Prosecutors Tim Mcneese and Mark Haws. This item is marked as EXHIBIT 8.

8. On October 11th, 2011 I contacted Mike Hiskett and made an attempt to question him about the Packet he found and gave to Charboneau. Hiskett refused to talk to me. He told me I would have to get permission from IDOC Warden Carlin. On October 12th I spoke to Warden Carlin and requested that I be granted access to Hiskett and Shedd (Lt. Unger has since been fired). Warden Carlin told me she would have to check with the Attorney General's Office first. On October 13th Warden Carlin called me back and advised that the Attorney General's Office had denied my request to interview Hiskett and Shedd.
9. I next examined Inventory item 5, a hand written page signed by former Jerome County Deputy Orville Balzer. I made contact with Mr. Balzer at his residence near Fruitland. I showed him the document and asked him what he could tell me about it. Mr. Balzer looked at the document and advised me that it was a forgery in that the signature was his, but the rest of the document was written by an unknown person. I examined Balzer's handwriting on his original police report, as well as other samples of his handwriting he showed me at his home. The handwriting was such a contrast that it clearly had not been written by Mr. Balzer and is a forgery. That item is labeled EXHIBIT 9.

10. EXHIBIT 2 also discussed the fact that certain firearms that may have been involved in the crime had been buried at the original crime scene. I contacted the Property Manager, Frank Judd. I requested permission from Mr. Judd to enter the property and use ground penetrating radar to search for any possible signs of the buried weapons. Mr. Judd informed me that he had no problem with granting permission, however he did require that the Jerome County Sheriff's Department also have a representative present as well. I spoke to a Captain at the Jerome County Sheriff's Office and was informed that they could not be present to assist us. I was told that the current Jerome County Prosecutor had sent the Sheriff's Office a letter ordering them to refuse any assistance to do a search of the property.

11. On August 23, 2011, I received two documents from CJ Nemeth, who was a former investigator for Jaime Charboneau. The first document is an eight page photocopy of a letter written by Jaime Charboneau to his first attorney, Golden Bennett. The letter was written on August 10, 1984. The second document is a supplemental letter to Golden Bennett in which Jaime Charboneau describes the gun he possessed as having a "Calamity Jane" insignia inscribed on the gun. These documents were NOT part of the packet which Mr. Charboneau received from Officer Hiskett. These documents are labeled as Exhibit 10 and Exhibit 11.

Your affiant is providing this information as a way of updating the Court with the progress of my investigation as outlined in a previous affidavit filed with the court.

DATED this the 24 day of OCTOBER, 2014

Tom Berry  
Signature of Affiant

SWORN to subscribed before me, this 24<sup>th</sup> day October, 2014

Brian Marc Tarr  
NOTARY PUBLIC

My Commission Expires:

August 19, 2015



## EXHIBIT 1

# EXHIBIT 1

| Inventory List |   | All items listed were received by Tom Berry From Attorney Greg Silvey on October 4th, 2011. STATE vs CHARBONEAU   |
|----------------|---|---|
| Inventory ID   | Name  | Description   |
|                |   | NOTE: All items on this inventory received a number and my initials, <b>TB</b> , and the date received, in <b>Red Ink</b> .   |
| ITEM #1        | White Envelope  | White Envelope, approximately 10x13 in., containing documents   |
| ITEM #2        | DOCUMENT  | OFFENDER CONCERN FORM with IDOC Number 22091  |
| ITEM #3        | Approximate 7.71x5.45 inches document                                     | Document with title ISCI RESOURCE CENTER  |
| ITEM #4        | Approximate 6.6X9.02 Document   | Lined Handwritten document signed by A. DeWayne Shedd dated 6/27/03   |
| ITEM #5 -5A    | Two photo copy documents stapled together                                 | Item 5A Hand written document signed by Orville Balzer/345 and photo copy of envelope addressed to Mr. Philip Becker from Tira Arbaugh with postage stamp of Bruneau, Idaho Sept 7 1989   |
| ITEM #6        | Empty envelope  | Empty Envelope addressed to Jaimi D. Charboneau from United States Courts   |
| ITEM #7        | ENVELOPE CONTAINING DOCUMENTS   | Envelope with addressee to Inmate Charboneau 22091 containing six documents 7-A to 7-F  |
| ITEM #7-A      | ISCI Inmate Concern Form #22091   | Handwritten ISCI Inmate concern form #22091, addressed to Mr. Davis, dated 6-17-01  |
| ITEM #7-B      | ISCI Resource Center Check out Memo                                       | Check out memo signed by Mr. Davis with Return By: date of 5/21/01  |
| ITEM #7-C      | Document dated 11/14/2004   | Typed Document dated 11/14/2004 apparent email type correspondence From Dewayne Shed and Lt. William Unger with reply back from Unger to Shedd. Regarding Shedd's remarks about orders from Haws to keep the Charboneau mission between them. |
| ITEM #7-D      | Document dated 11/15/2004   | Typed Document dated 11/15/2004 apparent email type Correspondence between Shedd and Unger regarding the shredding and deleting of all old messages.  |
| ITEM #7-E      | Photo Copy of Typed letter to Charboneau from LARRY.                      | Photocopy of two page typed letter, dated June 3, 2001 addressed to Jaimi D. Charboneau and signed by LARRY.  |
| ITEM #7-F      | Photo Copy of Petition for Habeas Corpus                                  | Photo Copy of page one of Petition for Writ of Habeas Corpus dated November 6, 2001   |
| ITEM #8        | Sworn Statement of Larry Gold   | Two Page signed Statement of former Jerome County Sheriff Larry Gold Dated November 13, 2001  |
| ITEM #9        | IDOC Access to courts request 6/17/01                                     | one page, front and back, of IDOC Access to Courts Request dated 6/17/01  |
| ITEM #10       | IDOC Access to courts request 11/5/2001                                   | one page, front and back, of IDOC Access to Courts Request dated 11/5/2001  |
| ITEM # 11      | 3 page typed letter to Greg Silvey  | Three Page typed letter to Greg Silvey signed by Jaimi Charboneau Date 1/19/2006  |
| ITEM #12       | 2 Page Typed Letter to AG Wasden  | Two page typed letter to Attorney General Wasden dated 3/31/2008 and signed by Charboneau   |
| ITEM # 13      | Envelope stapled to Judge Becker letter                                   | Envelope with addressee to Inmate Charboneau 22091 attached to 7 page letter to Judge Becker from Tira Aubaugh. Written on front of envelope in red ink "Shedd, scan this and take care of it. Lt. Unger                                      |
| ITEM #14       | Photocopy of 7 page hand written letter to Judge Becker from Tira Aubaugh | Photocopy of seven page hand written letter to Judge Becker signed by Tira Aubaugh Halman and dated September 6, 1989. Was stapled to envelope item # 13  |

## EXHIBIT 2



## EXHIBIT 2

Dear Judge Becker,

Since I am writing this letter to you because I believe you should know the truth about some of the things that happened the day my mom died & the truth about some of the things that I was told to say & told not to say. I believe my mom would want me to tell the truth about these things. None of this is easy for me because I loved mom. She was my best friend & I feel lost & alone without her.

I am not sure if I am supposed to be writing you like this with you being in charge of the court proceedings with Jamie & my mom being shot. It's just that I keep having bad dreams about all of this & I can't talk to anyone about this, even my sister. Everybody I know seems to be mad all the time. I know that they are all still very mad at Jamie & they all tell me I should only do & say what the prosecutor & Mr. Carr tell me to do. But I believe you should know that some of the things in my statements to the



police were not all true.

On the day that this all happened I was pretty shook up because my mom had just been shot & because there were so many people asking me too many questions.

When I wrote out my statement on the day it happened I was told by an officer, I think his name is Driesal, to only say certain things so that my statement wouldn't be confusing. I do not recall everything that I said in my statement that day but I do remember that officer Driesal told me to say certain things that were not really true. One thing I remember is when I wrote down the time that I woke up that morning. Officer Driesal told me to write down a specific time which I knew was not true because I did not know what time it was when I woke up. It has never been like me to look at the clock when I wake up. I just wrote down what officer Driesal told me to say.

Also I remember that Tuf is the one who said something about the horses what I told

officer Driesal is that after mom woke up that morning I remember her asking Jamie to go out + check on our horse that had been to the vet a few days earlier.

Before going outside I remember that Jamie tied a new white windrag around my neck + he kissed my forehead + he told me that the wrangle horse was waiting on me. Jamie would always tell me that when I would oversleep.

Before Jamie went outside to check on the horse mom came back to my bedroom + gave me a big box wrapped in decorative paper. When I opened the box it had a new 22 rifle in it. That was my graduation gift from mom + Jamie. After I told them thank you Jamie went outside + mom went into the bathroom to take a bath. After mom got dressed she told Tip + me that she was going outside to help Jamie with the horses.

I remember telling Officer Driesal that when Tip + I first heard mom screaming I could hear her yelling for Tip. At

that time I was still in the  
bath tub. It was just a few  
seconds later when we heard  
the gunshots. That's when Tiffi  
came running in the bathroom &  
she screamed at me to get out of  
the tub & get my clothes on.  
When I had gotten dressed Tif  
grabbed my new .22 rifle that  
mom & Jamie had just given to  
me that morning. Tiffi gave me  
one of mom's .25 pistols & then  
she took me outside with her.  
When we got outside I followed  
Tif over behind the sheep wagon  
which was right across the driveway  
from the barn. We could see mom  
in the alleyway by the feed  
conals but I did not see Jamie.  
I could only hear his voice.  
I remember I heard Tif shoot the  
rifle while we were behind the  
sheep wagon. I remember this  
because it startled me so much  
that I accidentally fired mom's  
pistol which also scared me. After  
that I asked Tif what was going  
on. That's when she told me mom  
had taken Calamity Jane with her  
when she went outside to help  
Jamie with the horses. Calamity  
Jane is what we call one of

moms ID rifles when I told this to officer Dreesal that day he told me he would make a note of it but he told me it wasn't necessary to state every little thing in my statement.

I also remember that when I finished my statement that day Officer Larry Wehl came to see us at grandpas house a few days later when he told me that he needed to talk to me again because he said I had forgotten to write down some important things in my statement. Officer Wehl told me that I had forgotten to put down the part about hearing more shots that day after Riffi & I had went back into the house. Officer Wehl told me to write out another statement saying I had heard 6 or 8 more shots while Riffi & I were in the house changing our clothes. I remember I had to sign another statement when Officer Wehl told me to write that down even though I knew it was not true.

One other thing that bothers me is something Marc Haws the new prosecutor from Boise had told us to do. Mr Haws has told us



that we need to get rid of  
moms Calamity Jane rifle. I don't  
understand why he would want  
us to do that but grandpa + me  
+ uncle Jimmy we all went out  
to the el rancho property last  
week + we buried moms rifle  
out there behind the potato  
cellar where we used to feed the  
horses. Uncle Jimmy wrapped  
moms rifle in an old blanket  
+ buried right behind the cellar  
just a few feet from the place  
where he had thrown some of  
moms other things in the crawl  
space at the back of the potato  
cellar a few weeks after the day  
my mom died.

That's the stuff we told  
Duane Brown + officer Davis about  
back then. Everybody told me not  
to say anything about Uncle Jimmy  
throwing those things away in the  
crawl space. But Ma Becker I know  
that this is not right + I hope that  
I am doing the right thing by  
telling you these things.

Can you please call or write  
to my grandpa + talk to him  
about this stuff? Because I know  
he is a good man + if he is doing  
anything bad or wrong its only

because he is so mad at  
Jamie for what happened to  
my mom.

Jina Orbaugh  
Halman

September 6, 1989

Mr. Becker,

I am in Bruneau Idaho for  
a cowboy benefit & street dance  
where Pinto Bennetts band is providing  
the music. Pinto Bennett knew my  
mom, & me & Tif for a long time  
ever since we lived at Smiths  
Prairie. I talked with Pinto about  
the things I have told you in  
this letter & he is the one that  
convinced me to write you.

Mr. Becker, I am 19 years old now  
& I need to tell you the truth about  
the things in this letter. If you  
need to talk with me about these things  
you can reach me at 224-4070. That's  
my grandpas phone number. I will be  
back in Jerome early next week.

My Aunt Margene, mom's sister can  
also tell you about this stuff because  
she was also there when Mr. Haus told  
Uncle Jimmy & grandpa & all of us to  
get rid of mom's rifle.

Joni M. Vaughn  
622 Highland Rd  
Jerome, Idaho  
83338



Mr. Philip Becker  
Jerome County Judge  
300 North Lincoln  
Jerome, Idaho  
83338

## EXHIBIT 3

President of the U.S.A. President Bill Clinton

Most popular singers Jim McGraw

Mom and Dad's favorite album Counting Crows

Songs at the top of the charts Jim McGraw - Not a moment to soon

Latest dance craze Country Line Dancing

Best movies Legends of the Fall

Popular movie stars Brad Pitt

Popular t.v. shows Chicago Hope

Best selling books \_\_\_\_\_

Fashion trends Gangster clothes + Western

Popular exercises Mt. Biking + Outdoorsports.

Sports heroes Chicel O'neil

Popular cars and prices Grand-Am \$15,500<sup>00</sup> + Chevy Truck \$24,000<sup>00</sup>

### Some prices today

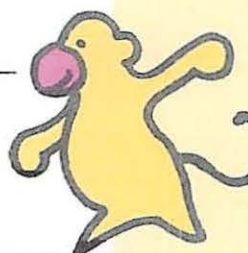
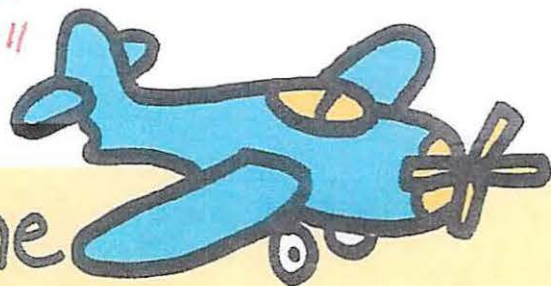
One dozen eggs \$1.09 doz. One loaf of bread 99¢

One quart of milk \$1.25 \$2.25 gal One cup of coffee 50¢

Cost of movie in theater \$5.50 per person

One record album \$8.00 \$15.00 Japco

plane



## EXHIBIT 4



EXHIBIT 4



It's a Boy

Date of birth [REDACTED]

Time of birth 7:44 am

Weight 7 lbs 1 oz. Length 20 inches

Color of eyes Blue Color of hair Black

Blood type \_\_\_\_\_ Diagnosis \_\_\_\_\_

Rh Factor \_\_\_\_\_

Distinguishing characteristics He has his  
daddy's cleft chin, and looks  
alot like big sister Kadie

flag

TB - 10-13-2011

EXHIBIT 5





EXHIBIT 5

EXHIBIT 5



When and where labor began At Home

We left for the hospital at 2:30 pm a.m./p.m.

Name and location of the hospital St. Benedict's

Germantown, Idaho

The labor lasted 17 1/2 hours

Delivery lasted 10 min.

Who delivered the baby Dr. Lorain Jansen

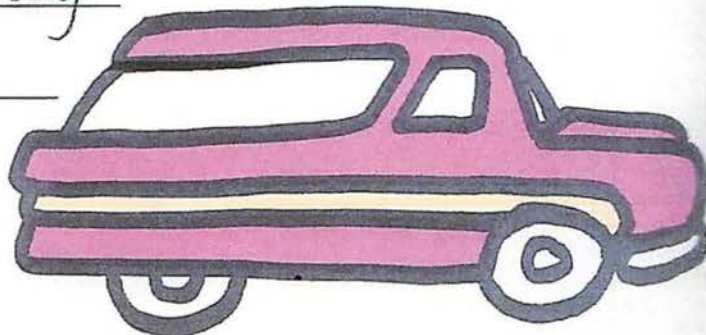
Nurses attending Sister Janet + Linda

Special memories

After a very long labor I  
couldn't wait to see you so I pushed you out  
fast. You were blue, Daddy cut the cord  
While Grandma Griggs + Aunt Liffie watched.  
Daddy was so proud of you he wouldn't  
hardly put you down long  
enough for the nurse to  
look after you.



Stationwagon



TB 10-13-2011

## EXHIBIT 6

EXHIBIT 6

**From:** Shedd, A. Dewyne/paralegal  
**To:** Unger, William/LT.  
**Date:** 11/14/2004 08:47  
**Subject:** Re: Offender Charboneau, Jamie Dean #22091  
Location: ICI-O)/C-2-bunk, B5

LT. Unger, offender Charboneau #22091 currently has an active appeal in Federal Court. I also have a ('filed-copy dated Nov. 6, 2001' of a petition for writ of Habeas Corpus Petition for original Jurisdiction), 'In the Supreme Court of the state of Idaho', on Charboneau. FYI, when I spoke with Marc Haws last week he said, 'don't worry I've got your backs covered'. He did ask me to relay to you that we should keep this 'Charboneau mission' between the three of us and just carry it out as if it was any normal random check of an inmate's mail/legal mail. Thanks, Shedd

>>> William Unger LT. 11/13/2004 20:32 >>>

Dewayne, I have reviewed this letter you gave me last week. The one that you told me you had removed from an envelope that was mailed to inmate Charboneau, #22091. The name of the person that wrote this letter does appear to be the name that Mark Haws asked us to look out for. Dewayne, I'm not sure that we should be getting involved in this thing. I don't know about you but I damn sure don't want my name to get caught up in an investigation.

Charboneau by himself does not concern me, he is just an inmate. My concern is that this letter was mailed to Charboneau and received at this facility from a man named Larry Gold.

I did a little background research on Larry Gold and I found out that he was at one time the Sheriff in Jerome, Idaho. I also found out he was in law enforcement in California prior that. I don't know the connection between this Larry Gold and Charboneau Dewayne, but something tells me that if Gold went to all the trouble to send this letter to Charboneau, it doesn't make sense to me that he would be in with this Federal Prosecutor Mark Haws who's got us looking through Charboneau's legal mail for the same letter that Gold mailed to Charboneau.

As far as I'm concerned Charboneau has no legal rights and I'm game for anything to help this Federal Prosecutor but let's be careful Dewayne.

Let me know what Haw's says. If he will back us I have no problems with confiscating Charoneau's legal mail. Dewayne, when you speak to Haws again, ask him where Charboneau's current legal actions are? Does he have mail coming from both Federal and State Courts?

Thanks, LT. Unger

## EXHIBIT 7

**From:** Shedd, A. Dewyne/paralegal  
**To:** Unger, William/LT.  
**Date:** 11/15/2004 09:26  
**Subject:** Re: Offender Charboneau, Jamie Dean #22091  
Location: ICI-O)/C-2-bunk, B5

EXHIBIT 7

LT. Unger, have notified Marc Haws about the documents founding offender Charboneau's mail. I will also shred and delete all old messages.

>>> William Unger LT. 11/14/204 17:22 >>>

Shedd, I agree these documents from Larry Gold do appear to be items that will be of particular interest to Mr. Haws.

I see that name Tira Arbaugh is mentioned again in this affidavit that Larry Gold mailed to Charboneau.

Dewayne, don't forget to do like Haws suggested and make up a list of these documents and attach it to a log sheet in the mailroom indicating that Charboneau sighed them.

Thanks LT. Unger

## EXHIBIT 8



# EXHIBIT 8

Per Tim McNeese from the AG's office / Instructed to monitor All of inmate Charboneau's personal / legal MAIL. All incoming And outgoing legal MAIL. If A letter Arrives At ICI-O for Charboneau from Larry Gold, A former Sheriff of Jerome County, sieze it without notifying Charboneau, look for any documents depicting the name Tim Arbaugh, confiscate Any such documents and notify McNeese immediately. If McNeese is not Available then contact another Attorney MARK Haws At the Federal Court Building in Boise. His phone number And Address is in the directory on my desk. Notified Lt. Unger And he Agreed to help monitor Charboneau's mail.

A. D. W. Agre Shull

6/27/03

## EXHIBIT 9



# EXHIBIT # 9

Letter from Tira Arbaugh / daughter of Marilyn Arbaugh. Letter addressed to Judge Philip Becker.

Jerome County Courthouse.

Postal stamp on envelope indicates the letter was mailed from Bruneau Idaho on September 7, 1989. A.M.

This letter was given to Judge Becker's court clerk Cheryl Watts on 9-11-1989.

Writer witnessed Cheryl Watts open the envelope and read the letter enclosed.

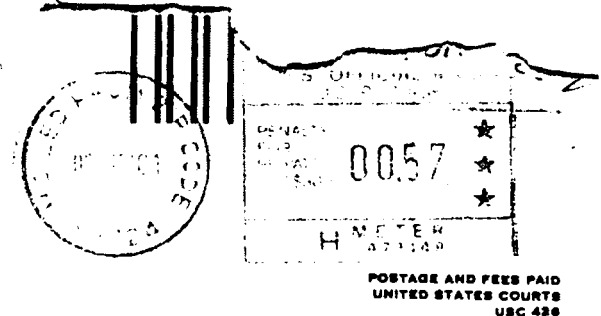
Not wanting to challenge the court clerk on the legal question regarding the letter, writer elected to simply advise Cheryl Watts against shredding the letter, as that could potentially invite a federal investigation for destroying evidence because the letter was delivered from the U.S. Postal Service; a federal agency. A better way writer told Cheryl Watts was to simply lose the letter in a "ghost" file.

Writer later discussed this matter with Chief Deputy Mito Alanzo and his reply was, "I'm not suprised. Just another example of Jerome Counties gunsmoke style justice, remember the Melvin Wright thing."

Don B. / 3.45  
242 of 956

UNITED STATES COURTS  
DISTRICT OF IDAHO  
550 W Fort St MSC 039  
Boise ID 83724

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE \$300



9

Jaimi D. Charboneau  
ISCI / Unit #7 - #22091  
P.O. Box 14  
Boise, ID 83707

---

Jaimi D. Charboneau  
Inmate # 22091 Housing Unit #9  
I.S.C.I.  
Boise, Idaho 83707

June 3, 2001

Dear Jaimi;

Please don't consider my late response to your letter, as a lack of caring or that it was such a low priority that I just got around to it. In fact the circumstance was just the opposite. I have thought of you often during the past many years and your letter woke up new memories and feelings. I am not going to take the approach of "get on with your life" like I read in the letter you enclosed, because that's not what I want to say or how I am feeling.

I trusted you and that did not come easy for me. I knew how you would act in nearly every situation because you are a man of pride. You were young when a terrible string of events took place in your life. Some of those events were your responsibility and you have taken responsibility for them, but then "pieces seem to have been added" which you were not responsible for and "events" that you could have no control over. I believe that these are a source of your inner anger, which is completely understandable. Anger is a normal human emotion. If it were not for the "righteous anger" of a group of wonderful men in Boston who had a "Tea Party" during the late 1700's, we may not be a "Free Nation" today. What you do with your anger can be constructive or destructive. The choice is yours — and yours alone.

I believe that some of the events during your trial caused fear, prejudice and the need for revenge. Multiple persons emerged in need of an event that could transform "some very ordinary people in ordinary jobs" on a journey of personal ego development, which served to feed a hunger for power that became obsessive.

The most disgusting issues were the apparent acts of a few people that "appeared to conspire" to punish a person far beyond the limits of the law, because the law "if fully enforced" may have required a "Guilty Man" to go free. How could this sleepy little town not be "easily self convinced" to "stretch or even manipulate the facts" to arrange for a finding of guilt without sufficient admissible evidence, even if the chain of evidence needed a little repairing here and there, behind the scenes.

Pg. 1 of 2

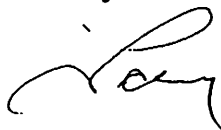
Pg. 2 of 2

There also appeared to be a "collaboration of minds" intelligent enough to controls the events of the time, but "little enough" to feel that they "had to collaborate" because the facts "may not have been strong enough", or "evidence that was collected under suspect conditions, dismissed because of contamination" and may have required manipulation by design. Jaimi, remember that this is just a personal hypothesis now. I have no proof of this in your case, just a deep down feeling that I am right because I have witnessed this "collaboration of minds" do the same thing in a different situation.

Jaimi, if you don't completely understand this letter, it's not you fault. I am not sure what I really want to say, other then it's good to hear from you! Please remember what I said, "It's your choice and your choice alone, what you do with your righteous anger. You can let it destroy you or be a source of strength. Stay is school, any school and keep reading and studying a wide variety of literature, both historic and current. Don't let your mind be dominated by any one thing, especially hate."

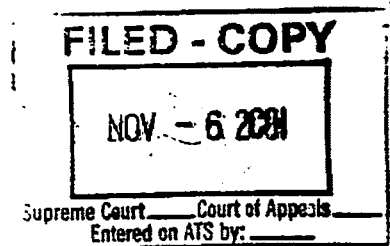
Hate can and will destroy nearly everyone. You are a bigger man then that.

Larry



JAIMI D. CHARBONEAU # 22091  
ISCI - UNIT #9  
PO Box 14  
Boise, ID 83707

In Propria Persona



IN THE SUPREME COURT OF THE STATE OF IDAHO

JAIMI D. CHARBONEAU,

Petitioner,

-vs-

PAM SONNEN, WARDEN,  
I.S.C.I., ET.AL.,  
Respondent.

Case No. SP-OT-01-000

**PETITION FOR  
WRIT OF HABEAS CORPUS  
PETITION FOR ORIGINAL  
JURISDICTION**

Comes Now, Jaimi D. Charboneau, Petitioner in the above-entitled matter, and Invokes the Jurisdiction of the Court pursuant to Idaho Code §19-4201 ET, SEQ., Article 1 § 5 of the Idaho State Constitution, Idaho Code § 1-201, Idaho Appellate Rule #43, and the Fourteenth Amendment of the United States Constitution. Petitioner herein moves this Court for issuance of the Writ of Habeas Corpus due to his unlawful restraint and the violation of his Constitutionally protected right to due process and equal protection under the law.

This petition is further supported by Appendices and Memorandum Of Law attached hereto.

**PARTIES**

The petitioner is Jaimi D. Charboneau, # 22091, I.S.C.I. Unit #9, PO Box 14, Boise, Idaho 83707, who is presently incarcerated

6:11:25 AM

**ISCI Resource Center Check Out Memo** Unit: 9B

| <b>IDOC</b> | <b>Inmate</b> | <b>Title</b>                | <b>Checked Out</b> |
|-------------|---------------|-----------------------------|--------------------|
| 22091       |               |                             |                    |
|             | CHARBONEAU    | Idaho Court Rules Vol 2     | 05/18/2001         |
|             | CHARBONEAU    | Self-Help Litigaiton Manual | 05/18/2001         |
|             | CHARBONEAU    | Black's Law Dictionary      | 05/18/2001         |

Mr. Charboneau, regarding your question on how to file a petition in order to get your case filed before the proper court to prove your innocence.

It is my recommendation that you read section 19-4201 of the Idaho code; you should also read Article 1, section no. 5, and Article 5, section 9, of the Idaho Constitution.

If I was in your shoes I would file a petition with the Idaho Supreme Court and present to them a copy of the letter that you received from the Sheriff in your county and just ask that judicial body if that document presents a valid claim under the law.

You should also ask them to appoint you counsel. This would provide you the best opportunity to prove your innocence.

725 06/15/01

**If you leave your unit prior to these books being returned or picked up (if your are in 8 or RDU), please leave them in the unit with the officer. Inmates in all other unit are required to return the books to the Resoruce Center.**

Approved By: McDover

Return By: 05/21/01 0800

return by date extended to 06/18/01 0800

McDover

## ISCI Inmate Concern Form

Inmate Name Charboneau, Jaimi Dean IDOC# 22091

Housing Unit & Cell ISCI, unit 9 / B-Tier Date 6-17-01

TO Ms. Davis, staff paralegal / resource center

(Person most directly responsible for issue or concern)

Issue/concern Ms. Davis, I need your advise on how to get my criminal case back in court, I do not have an attorney and I am not sure what to do. Yesterday I showed you a letter which I recently received from a former Sheriff in the county where I was charged. I believe that this letter which I received from Sheriff Larry Gold may help to prove my innocence. Can you please tell me where and how I should go about filing a legal petition?  
Thank you very much for your time in this matter.

Jaimi Dean Charboneau  
Signature

Reply Mr. Charboneau, see response on memo provided with legal books

### Distribution:

- Both copies should be forwarded
- Yellow copy will be returned with response
- Inmate should record date sent for future reference

M. Davis

Signature

06 / 17 / 01

Date

From: Jaimi Dean Charboneau, #22091  
ICI-O, C-2 / C-21  
Hospital Drive, #23  
Orofino, Idaho 83544

To: Lawrence G. Wasden  
Idaho Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0101

Subject: Resource Center and Access To Courts

March 31, 2008

Dear Mr. Wasden,

On Friday March 28, 2008, I was in the resource center at ICI-O for the purpose of processing a Notice Of Appeal in response to an Order by the District Court in Jerome County dismissing a petition for post-conviction relief that I had filed in that Court.

According to the Court Rules I am required to file my Notice Of Appeal within a specified time frame, additionally, I am also require to serve a copy of my Notice Of Appeal on specific party's relevant to the action being filed.

When I tried to do these things so that my pleading would meet all the procedural requirements the staff person working in the resource center advised me that I could only make a certain amount of copies that she determined to be the proper number for the party's I was required to serve. In addition I was also informed by this resource center staff person as what my filing deadlines are. When I asked this resource center staff personnel if her legal advise would assure that my pleading would meet all the court's demands. She told me that her boss at the Idaho Attorney General's Office had instructed her to do things this way.

Letter to the Idaho Attorney General: -1-



Mr. Wasden, my only interest as I pursue access to the court's through the only means available to me; that means for Idaho inmates being what is defined as the " resource center ", is to file my pleadings with the courts in a manner that will be proper from a procedural stand point, i.e. within the court rules defining timeliness and, all other procedural regulations such as the proper number of copies and any and all other legal requirements that may well prove to have a legal determination on the outcome of my pleading.

This very thing has happened to me on other occasions when I have attempted to present my legal issues to the courts and your agents in charge of the " resource center " have obstructed my ability to process my pleadings and/or they have given me erroneous legal advise that had an adverse affect on that pleading.

Please tell me in writing if your instructions to those persons who are in charge of the " resource center " are known by and accepted by the Idaho Courts?

Thank you for your time in this matter.

Sincerely,

  
Ja'mi Dean Charboneau

Jaimi Dean Charboneau, #22091  
ICI-O, C-2 / C-15  
Hospital Drive North, #23  
Orofino, Idaho 83544

Greg S. Silvey, Attorney  
P.O. Box 956  
Kuna, Idaho 83634

January 19, 2006

Subject: The Brief you filed in the Idaho Supreme Court dated:  
January 12, 2006, Docket No. 32120.

Dear Greg,

I am in receipt of the Brief that you recently filed in the Idaho Supreme Court on my behalf. First let me state that I appreciate the work product that you have produced in preparing my appeal. I do, however, need to address a couple of issues that I discovered while reading the brief.

The first issue is found on page no. 1, in paragraph no. 2, in sentence no. 6 and, no. 7, you stated as follows: " However, Mr. Charboneau asserted that while he had shot Marilyn in self defense with a .22 rifle..." Greg, I never stated that I had actually shot Marilyn. What I did say from day one is that after Marilyn had tried to shoot me, again, with the same .22 rifle that she had shot me with in a previous incident that occurred a few months earlier in Lincoln County. When she tried to shoot me with her .22 "Calamity-Jane" rifle on July 1, 1984, I had managed to get the rifle away from her when she tripped over our dog "Siggy", who had stepped in front of Marilyn as she was walking towards me with that rifle leveled at me. When I got the rifle away from Marilyn she started yelling for her daughter Tiffanie as she was running down the feedbin Alleyway. A few seconds later Marilyn was shooting at me again with one of her .22 pistols.

Letter to Greg Silvey: (1)

Marilyn owned lots of guns. She even had pet names for them.

After Marilyn had started shooting at me with the pistol I stepped behind a corner post which was the only thing between myself and Marilyn. I was prevented from going out the Northend Alleyway door because by that time I could see Tiffanie at the sheepwagon and I could see that she also had a gun. The sheepwagon was in a direct line from the feedbin Alleyway. Being shot at from both sides and with no way out I admitted that I fired the .22 rifle from my hip around the post. I did not aim the rifle at anyone. That .22 rifle, Marilyn's "Calamity-Jane" .22 rifle was the only gun that I touched or handled during that incident on July 1, 1984. Again, Greg, Marilyn was alive and speaking to me the last time that I seen her on that day.

I just thought that I should clear that up for you.

Greg, I am concerned about the fact that Judge Butler was never actually involved in my case and, he can only rely on the very complicated and confusing record could easily mislead anyone unless they had the benefit of being personally involved or gaining full insight from someone who was personally involved. To illustrate my point I direct your attention to page no. 19 of the brief you filed, in the last paragraph the first sentence quotes Judge Butler as follows: "The evidence at trial clearly indicated that Marilyn Arbaugh died from shots to the chest, and that bullets recovered from the victim were matched to the Remington Rifle, which the petitioner has admitted to firing." Greg, the only gun that I admitted to having handled on July 1, 1984, when Marilyn was shot, was her .22 rifle the same rifle that she had shot me with previously in Lincoln County. That .22 rifle had Marilyn's name or initials, I can't recall which, engraved above the inscription "Calamity-Jane". That was engraved in the wooden stock portion of that .22 rifle. Doesn't it stand to reason that if that rifle was this Remington Rifle that Judge Butler refers to from the records he has read which refer to a Remington Rifle that "Marc Haws" the trial prosecutor had presented as evidence

Letter to Greg Silvey: (2)

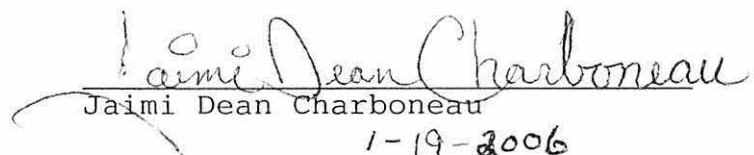
Exam #11  
TB  
10-4-11

at my trial, wouldn't it stand to reason that they would have mentioned in their description of that rifle that it had Marilyn's name and "Calamity-Jane" engraved in the stock? Also, why didn't anyone allow me an opportunity to view this "Remington Rifle" so that I could have confirmed or denied whether or not it was the rifle that I had handled on July 1, 1984? If Judge Butler would have had further proceedings as the Idaho Supreme Court directed him to do when they reversed and remanded my case back to the District Court all these questions could have been answered.

Greg, with all the new information that is slowly coming to light in my case I now have to wonder whether the Rifle that I did admit to having handled on July 1, 1984 was ever processed in the proper chain of custody. Could that rifle also be hidden in the attic of the Jerome County Courthouse? I'm not sure if you are aware of what "Tira" had told mother a couple years after my trial when she was married to my brother "Jimmy". What "Tira" had told mother is that "Marc Haws" had told her to get rid of her mother's rifle. At the time that Marc Haws told that to "Tira" she was only thirteen years old. "Tira" told my mother that she burried the rifle somewhere at the El Rancho 93.

Before I close I want to express my sincere gratitude for all the hard work that you have done for me. It's good to have someone with integrity working for them. Thanks Greg.

Sincerely,

  
Jaimi Dean Charboneau  
1-19-2006

Letter to Greg Silvey: (3)

cc: file

Item 5 11  
TB  
10.4.11

B-28 to 10-5-02  
from 12-5-03  
Levy 12-5-03

Inmate Charbonneau 22091

u 9 B 28 A

Received  
4.0-10/10/03  
A. D. [unclear]  
[unclear] [unclear]

IDAHO DEPARTMENT OF CORRECTION  
OFFENDER CONCERN FORM

Li. Umyr  
5/4/05

Offender Name: Charboneau, Jaimi Dean  
Housing Unit: 1C1-0, C-2 / C-15

IDOC Number: 22091  
Date: 5-3-05

To: Mr. D. Shedd, staff paralegal  
Issue/Concern: Mr. Shedd, will you please check the institutional legal mail log to encompass January of this year through April 29, and tell me if those records indicate that legal mail had been sent to me during that time frame from attorney "Greg J. Fuller".  
Mr. Shedd, do you know if a federal attorney named Marc Haws is attempting to interfere with my legal mail?  
Thank you for your assistance in this matter.

Jaimi Dean Charboneau  
Offender Signature

Reply: ~~These~~ The Requested Logs are kept in the Mail Room.  
Suggest you contact Mail Room.

A. Delgado  
Staff Signature

5/4/05  
Date

White - Return to Offender

Yellow - Retain for Institution Files

Pink - Retain by Offender



ISCI  
RESOURCE CENTER

Date:

06/18/07

To:

Charboneau

IDOC # 22091

Unit:

9

Subject:

☐ Rule 35; ☐ Credit for Time Served; ☐ Post Conviction; ☐ Ap.  
☐ State 1983; ☐ Federal 1983; ☒ State Habeas Corpus; ☐ Federal  
Habeas Corpus; ☐ Divorce; ☐ Child Support; ☒ Tort Claim;  
☐ Power of Attorney; ☐ Ada County In Forma Pauperis

You will find the requested form(s)/packet(s) attached. Please read. If you have questions after you have read the packet(s)/form(s) or need to make an appointment for a notary and copies, you may do so by submitting an access to courts request. Black pens are available through the commissary. If you are indigent you may get a black pen through the resource center. If you are in units 7 or 8 you may request a black pen from the unit staff. If you are filing in Ada County you need to specify this as they have their own In Forma Pauperis forms to be filled out.

Si usted no puede leer ingles y no hay alguien quien puede leer para usted, se puede pedir que el paralegal le ayude con entender este paquete. Para pedir asistencia usa la forma "Access to Courts Request".



Date Rec'd 06/17/01 Appt. Date \_\_\_\_\_ Time \_\_\_\_\_ Record # \_\_\_\_\_

IDAHO DEPARTMENT OF CORRECTIONS  
ACCESS TO COURTS REQUEST

Name: Charboneau, Jaimi Dean IDOC #: 22091 Housing Assignment: 154, unit 89  
Date Requested: \_\_\_\_\_

TYPE OF ACTION: I need \_\_\_\_\_ Form \_\_\_\_\_ Packet X Talk to paralegal

|  |  |  |   |
|--|--|--|---|
| <input type="checkbox"/> Rule 35         | <input type="checkbox"/> Appeal        | <input type="checkbox"/> Child Support                 | <input type="checkbox"/> Credit for Time Served |
| <input type="checkbox"/> Notary          | <input type="checkbox"/> Notary        | <input type="checkbox"/> Notary                        | <input type="checkbox"/> Notary                 |
| <input type="checkbox"/> Photocopies     | <input type="checkbox"/> Photocopies   | <input type="checkbox"/> Photocopies                   | <input type="checkbox"/> Photocopies            |
| <input type="checkbox"/> Post Conviction | <input type="checkbox"/> Divorce       | <input type="checkbox"/> Power of Attorney             |   |
| <input type="checkbox"/> Notary          | <input type="checkbox"/> Notary        | <input type="checkbox"/> Notary                        |   |
| <input type="checkbox"/> Photocopies     | <input type="checkbox"/> Photocopies   | <input type="checkbox"/> Photocopies                   |   |
| <input type="checkbox"/> Civil Rights    | <input type="checkbox"/> Habeas Corpus | <input type="checkbox"/> Tort Claim                    |   |
| <input type="checkbox"/> State           | <input type="checkbox"/> State         | <input type="checkbox"/> Photocopies                   |   |
| <input type="checkbox"/> Federal         | <input type="checkbox"/> Federal       | <input checked="" type="checkbox"/> Books to Check Out |   |
| <input type="checkbox"/> Notary          | <input type="checkbox"/> Notary        |  |   |
| <input type="checkbox"/> Photocopies     | <input type="checkbox"/> Photocopies   |  |   |

Filing deadlines/Court dates: I need to speak with the paralegal for legal assistance  
To get priority you must indicate the date/nature of any deadlines on every request. Proof of deadline required.

Briefly describe your issue: I spoke with you a few days ago concerning the letter that I recently received from the sheriff in the county where I was charged. After having read this letter, which I allowed you to do, can you suggest any resource material that might help me to understand how I should proceed with an appropriate court action?

I do \_\_\_\_\_ do not X have an attorney in this action.

Thank you very much!

I acknowledge that the IDOC Paralegal whose assistance I seek is not an attorney. The Paralegal cannot give legal advice as to the intent or effect of any document. Any such advice should be sought from a licensed attorney.

Jaimi Dean Charboneau June 17, 2001  
Inmate Signature Date

DISAPPROVED \_\_\_\_\_ If disapproved, reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Paralegal

Date

Date Rec'd \_\_\_\_\_ Appt. Date \_\_\_\_\_ Time \_\_\_\_\_ Record # \_\_\_\_\_

IDAHO DEPARTMENT OF CORRECTIONS  
ACCESS TO COURTS REQUEST

Nombre: \_\_\_\_\_ Numero de IDOC #: \_\_\_\_\_ Unidad: \_\_\_\_\_ Cama: \_\_\_\_\_  
Fecha que se quiere: \_\_\_\_\_

Tipo de Accion: Yo necesito \_\_\_\_ Formas \_\_\_\_ Paquete \_\_\_\_ Hablar con el paralegal.

|   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> <b>Regulacion 35</b>   | <input type="checkbox"/> <b>Apelacion</b>     | <input type="checkbox"/> <b>Adoyo del Nino</b>  | <input type="checkbox"/> <b>Credito Para Tiempo Servido</b> |
| <input type="checkbox"/> Notario                | <input type="checkbox"/> Notario              | <input type="checkbox"/> Notario                | <input type="checkbox"/> Notario                            |
| <input type="checkbox"/> Fotocopias             | <input type="checkbox"/> Fotocopias           | <input type="checkbox"/> Fotocopias             | <input type="checkbox"/> Fotocopias                         |
| <input type="checkbox"/> <b>Post Conviction</b> | <input type="checkbox"/> <b>Divorcio</b>      | <input type="checkbox"/> <b>Poder</b>           |   |
| <input type="checkbox"/> Notario                | <input type="checkbox"/> Notario              | <input type="checkbox"/> Notario                |   |
| <input type="checkbox"/> Fotocopias             | <input type="checkbox"/> Fotocopias           | <input type="checkbox"/> Fotocopias             |   |
| <input type="checkbox"/> <b>Civil Rights</b>    | <input type="checkbox"/> <b>Habeas Corpus</b> | <input type="checkbox"/> <b>Reclamo de Dano</b> |   |
| <input type="checkbox"/> Estado                 | <input type="checkbox"/> Estado               | <input type="checkbox"/> Fotocopias             |   |
| <input type="checkbox"/> Federal                | <input type="checkbox"/> Federal              | <input type="checkbox"/> <b>Libros</b>          |   |
| <input type="checkbox"/> Notario                | <input type="checkbox"/> Notario              |   |   |
| <input type="checkbox"/> Fotocopias             | <input type="checkbox"/> Fotocopias           |   |   |

.Fecha del dia del juicio o de ley de  
prescripcion: \_\_\_\_\_

Para darsele prioridad, necesita indicar la fecha y porque caduca en cada peticion. Se requiere  
prueba de la fecha del dia del juicio o de ley de prescripcion.

Describe brevemente por que pide ayuda: \_\_\_\_\_

\_\_\_\_ Tengo un abogado para este accion \_\_\_\_ No tengo abogado para este accion.

Reconozco que el paralegal del Departamento de Correccion de Idaho de quien pido asistencia  
no es abogado. Los paralegales no pueden dar consejos legales sobre la intencion o efectos de  
documentos. Solamente abogados licenciados pueden dar consejos legales.

\_\_\_\_\_  
Firma del Preso

\_\_\_\_\_  
Fecha de Hoy

DESAPROBADO \_\_\_\_ Si es desaprobado, la razon por la que no se aprobo o acepto su  
solicitud: \_\_\_\_\_

\_\_\_\_\_  
Paralegal

\_\_\_\_\_  
Date

Date Rec'd 11/05/01 Appt. Date 11/06/01 Time 8:00am Record # \_\_\_\_\_

IDAHO DEPARTMENT OF CORRECTIONS  
ACCESS TO COURTS REQUEST

Name: Charboneau, Jaimi Dean IDOC #: 22091 Housing Assignment: 15C1, Unit 9  
Date Requested: \_\_\_\_\_

TYPE OF ACTION: I need \_\_\_\_\_ Form \_\_\_\_\_ Packet ☒ Talk to paralegal

|  |  |   |  |
|--|--|---|--|
| <input type="checkbox"/> Rule 35<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies<br><input type="checkbox"/> Post Conviction<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies<br><input type="checkbox"/> Civil Rights<br><input type="checkbox"/> State<br><input type="checkbox"/> Federal<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies | <input type="checkbox"/> Appeal<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies<br><input type="checkbox"/> Divorce<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies<br><input type="checkbox"/> Habeas Corpus<br><input type="checkbox"/> State<br><input type="checkbox"/> Federal<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies | <input type="checkbox"/> Child Support<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies<br><input type="checkbox"/> Power of Attorney<br><input type="checkbox"/> Notary<br><input type="checkbox"/> Photocopies<br><input type="checkbox"/> Tort Claim<br><input type="checkbox"/> Photocopies<br><input type="checkbox"/> Books to Check Out<br>_____ | <input type="checkbox"/> Credit for Time Served<br><input checked="" type="checkbox"/> Notary<br><input checked="" type="checkbox"/> Photocopies |
|--|--|---|--|

Filing deadlines/Court dates: New Filing "original criminal case" need to file "A.S.A.P."  
To get priority you must indicate the date of any deadlines on every request. Proof of deadline required.

Briefly describe your issue: Ms. Davis, it has been five months now since I received the letter from Sheriff Larry Gold on or about June 3 which I allowed you to read. During that time frame I have read and studied all of the resource materials that you suggested that I read to help me to understand how to file a petition with the courts. I am still pretty confused about what I should do however, I feel that I should bring this matter before the courts now and ask them for counsel as you have advised me to do. Will you please schedule me an appointment to file my petition. This will be a state Habeas Corpus petition. I'm not sure if I need a notary or not.  
I do \_\_\_\_\_ do not ☒ have an attorney in this action.

Thank you very much

I acknowledge that the IDOC Paralegal whose assistance I seek is not an attorney. The Paralegal cannot give legal advice as to the intent or effect of any document. Any such advice should be sought from a licensed attorney.

Jaimi Dean Charboneau Nov. 5, 2001  
Inmate Signature Date

DISAPPROVED \_\_\_\_\_ If disapproved, reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Paralegal

Date

Date Rec'd \_\_\_\_\_ Appt. Date \_\_\_\_\_ Time \_\_\_\_\_ Record # \_\_\_\_\_

IDAHO DEPARTMENT OF CORRECTIONS  
ACCESS TO COURTS REQUEST

Nombre: \_\_\_\_\_ Numero de IDOC #: \_\_\_\_\_ Unidad: \_\_\_\_\_ Cama: \_\_\_\_\_  
Fecha que se quiere: \_\_\_\_\_

Tipo de Accion: Yo necesito \_\_\_\_ Formas \_\_\_\_ Paquete \_\_\_\_ Hablar con el paralegal.

|   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> <b>Regulacion 35</b>   | <input type="checkbox"/> <b>Apelacion</b>     | <input type="checkbox"/> <b>Adoyo del Nino</b>  | <input type="checkbox"/> <b>Credito Para Tiempo Servido</b> |
| <input type="checkbox"/> Notario                | <input type="checkbox"/> Notario              | <input type="checkbox"/> Notario                | <input type="checkbox"/> Notario                            |
| <input type="checkbox"/> Fotocopias             | <input type="checkbox"/> Fotocopias           | <input type="checkbox"/> Fotocopias             | <input type="checkbox"/> Fotocopias                         |
| <input type="checkbox"/> <b>Post Conviction</b> | <input type="checkbox"/> <b>Divorcio</b>      | <input type="checkbox"/> <b>Poder</b>           |   |
| <input type="checkbox"/> Notario                | <input type="checkbox"/> Notario              | <input type="checkbox"/> Notario                |   |
| <input type="checkbox"/> Fotocopias             | <input type="checkbox"/> Fotocopias           | <input type="checkbox"/> Fotocopias             |   |
| <input type="checkbox"/> <b>Civil Rights</b>    | <input type="checkbox"/> <b>Habeas Corpus</b> | <input type="checkbox"/> <b>Reclamo de Dano</b> |   |
| <input type="checkbox"/> Estado                 | <input type="checkbox"/> Estado               | <input type="checkbox"/> Fotocopias             |   |
| <input type="checkbox"/> Federal                | <input type="checkbox"/> Federal              | <input type="checkbox"/> <b>Libros</b>          |   |
| <input type="checkbox"/> Notario                | <input type="checkbox"/> Notario              |   |   |
| <input type="checkbox"/> Fotocopias             | <input type="checkbox"/> Fotocopias           |   |   |

.Fecha del dia del juicio o de ley de  
prescripcion: \_\_\_\_\_

Para darsele prioridad, necesita indicar la fecha y porque caduca en cada peticion. Se requiere  
prueba de la fecha del dia del juicio o de ley de prescripcion.

Describe brevemente por que pide ayuda: \_\_\_\_\_

\_\_\_\_ Tengo un abogado para este accion \_\_\_\_ No tengo abogado para este accion.

Reconozco que el paralegal del Departamento de Correccion de Idaho de quien pido asistencia  
no es abogado. Los paralegales no pueden dar consejos legales sobre la intencion o efectos de  
documentos. Solamente abogados licenciados pueden dar consejos legales.

Firma del Preso \_\_\_\_\_

Fecha de Hoy \_\_\_\_\_

DESAPROBADO \_\_\_\_ Si es desaprobado, la razon por la que no se aprobo o acepto su  
solicitud: \_\_\_\_\_

Paralegal \_\_\_\_\_

Date \_\_\_\_\_

Tuesday November 13, 2001

SWORN STATEMENT OF  
FORMER JEROME COUNTY SHERIFF  
LARRY GOLD

STATE OF IDAHO       )  
                                  )  
                                  ) SS  
COUNTY OF JEROME   )  
                                  )

Comes now Larry Gold, I do SWEAR upon my oath and under penalty of perjury that the information and facts provided herein are true and correct to the best of my knowledge and belief:

1. That I am a valid citizen of the State of Idaho, I am over the age of (18) eighteen years and competent to testify about the information I declare in this sworn statement.
2. That I was duly elected sheriff of Jerome County at the time of Jamie Charboneau's appeal and resentencing proceedings.
3. That "water-cooler" conversations were often held within my hearing concerning development of case evidence and the disposition of material facts with regard to pertinence or significance.
4. That as I stated in my June 3<sup>rd</sup> 2001 letter to Mr. Charboneau, I am aware of certain improprieties committed by the Jerome County prosecutors office and the special prosecutor from the Idaho Attorney General's office (Marc Haws) in preparing various cases for trial, and specifically Mr. Charboneau's case.
5. That it is my belief that contrary to my efforts and mandates, certain court and county officers often manipulated or affected the facts and evidence of cases to arrange for a finding of guilt.
6. That it is my belief that facts and evidence in the Charboneau case were purposely manipulated and altered to arrange for a verdict of guilty. A specific example of this came to my personal knowledge when in the fall of 1989, my chief deputy

Mito Alanzo confided in me his concern about the fact that the District Court clerk Cheryl Watts was in possession of a letter which had been delivered to the Jerome County Courthouse via The United States postal Service. Chief deputy Alanzo informed me that the letter at issue had been addressed to district court Judge Philip Becker and had been sent by Tira Arbaugh, the daughter of Marilyn Arbaugh. Chief Deputy Alanzo told me that the subject matter of this letter had significant relevance concerning the Charboneau case. Chief Deputy Alanzo stated that his concern was that the District Court Clerk Cheryl Watts had requested that he help her to destroy the letter.

7. That I did speak with Jerome County prosecutor John Horgan about the court clerk Cheryl Watts being in possession of the letter that Tira Arbaugh had mailed to Judge Becker, and the allegations made by Chief Deputy Alanzo that Cheryl Watts was conspiring to destroy the letter.
8. That I will be available to the Court for whatever assistance it requires to determine the effect of culpability of the aforementioned parties and the harms they may have caused to occur.

Dated this 13 day of November, 2001

  
\_\_\_\_\_  
Larry Gold  
Jerome County Sheriff, Ret.

## EXHIBIT 10

Friday August 10<sup>th</sup> 1984; Had a visit from Jim Coakley.

(My statement of what happened on July 1<sup>st</sup> 1984.)

Jim Coakley, Golden Bennett's investigator came over to the jail in Jerome today to speak with me about what had happened on July 1<sup>st</sup> at "EL-RANCHO 93". Mr. Coakley also asked me if I would allow him to hypnotize me. Mr. Coakley said it would help me to recall everything more clearly. Mr. Coakley said that he and Mr. Bennett had discussed it and they thought unless I was hypnotized I would never remember everything.

Mr. Bennett I am not really comfortable with the idea of being hypnotized. Right now I am really confused and in disbelief of all that has happened. I know that you believe in this hypnotic stuff and I want to cooperate with you but this hypnotic stuff goes against all my religious beliefs and I need time to come to grips with all of this.

I will however do as Mr. Coakley requested and write down everything that I can recall about the events of July.

As I told you and Mr. Coakley when you came to see me last week me and Marilyn had been seeing one another off and on even though we were no longer living together.



We had been out on dates in the weeks and months prior to this tragic ordeal. You and Mr. Coakley both seem convinced that I am confused about what I have told you I recall about what happened.

Maybe my memory of those events is a little distorted as you suggest Mr. Bennett, but this is what I recall.

I went to the ranch with the 22 rifle which Marilyn and I had picked out as a graduation present for Tira Marilyn's youngest daughter. I also <sup>had</sup> the gift wrapping paper with me, Marilyn had asked me to pick some up.

I spent a couple of nights with Marilyn, she wanted me to check on the horses, in particular a stud horse colt which had just recently been cut. Marilyn was concerned about infection.

I gave the 22 rifle and the gift wrapping paper to Marilyn. I did not see the rifle again until Sunday morning when all of this happened. Marilyn had come out to see me early that morning, on that Sunday morning July 1<sup>st</sup>, in the barn area where I had been sleeping. Marilyn brought me some coffee and some pop tarts for breakfast.

We spent a short time together that morning, it was during that time that Marilyn told me that she was going to tell Tiffy and Tira that I was there and we were going to surprise Tira with the 22 rifle.

Marilyn left and went back into the house, she returned about 10 or 15 minutes later. This time she had the rifle and she was wearing her holster she also had her back pack. Marilyn used a brownish color small back pack to carry all of her feminine things in things like make up, lotion, powder and she almost always had a pistol in her back pack.

When Marilyn came out to the tack room the second time that morning, I'm not sure what time it was although the sun was up pretty high so I would guess that it would have been at least 8:30, anyway when Marilyn came back out the second time she was carrying the 22 rifle as I stated. Marilyn told me that she wanted to take the girls Tiffy and Tira to a place where Tira could shoot her new rifle.

I said OK. I never had any indication of what was about to happen a moment later. Suddenly Marilyn turned and pointed the rifle right at me.

was standing in the front part of the tack room which is located just inside the front portion of the alleyway. Marilyn had walked a few feet past me down the alleyway when she came back out to the barn and tack room area. She was about 3 or 4 feet away when she turned and pointed the rifle at me. Stunned and in shock and overcome with fear, I couldn't believe this was happening again. As you know Marilyn had shot me several times with one of her 22 pistols, just a few months prior to this incident. At the same instance when Marilyn had pointed the rifle at me "Siggy", Marilyn's German Sheppard dog walked between us and Marilyn tripped over the dog. At that instant I instinctively reached out and grabbed for the barrel of the rifle. Though I do not know how I was somehow able to grab the barrel of the rifle. With the barrel in my hand I ducked and at the same time raised my arm pointing the rifle upwards and away from my head. As I did so I heard a shot go off, maybe more than one shot, anyway, I then began trying to wrestle the rifle away from Marilyn.

As we both struggled for the rifle Marilyn began to yell for Tiffy her oldest daughter. I finally managed to get the rifle away from Marilyn. As soon as I did so Marilyn turned and started running down the alleyway, away from the tack room and front entrance doorway. Marilyn was still yelling for Tiffy as she ran down the alleyway. Marilyn had gone only a short distance down the alleyway when she turned back towards me, now facing me again Marilyn pulled something from inside of her back pack when she dropped her back pack she lifted the object she had taken out of her back pack and pointed it at me it was a pistol. About that same time I was distracted by a noise behind me it sounded like a slamming door when I turned around to see what the noise was I saw Tiffy coming out of the house carrying what looked like a pistol. I was then startled by the sound of a gun shot. When I turned back around in Marilyn's direction another shot rang out there was a post just to the side of where I was standing so I quickly moved over behind it for protection.

I soon realized that I was trapped between Marilyn who was shooting at me, and Tiffy who I also thought sure had a gun. I didn't know what to do and I panicked. I remember telling myself that there was no way I was going to go out the front entrance doorway and put myself in danger of being shot by Tiffy because I knew I could never shoot at a teenage girl. Desperate and scared, without even thinking I started shooting the rifle from my hip. I never actually aimed the rifle in the direction of Marilyn. After I had fired the rifle there was a sudden silence. After a few seconds I looked around the post, which was all that was between myself and Marilyn, in the direction of Marilyn. When I did I could see that she was on her knees with her head and body still upright. Marilyn was looking towards me. The pistol she had been shooting at me was on the ground in front of Marilyn. Seeing this I ran down to where Marilyn was and I remember we spoke to each other though I do not remember exactly what we said. A few moments later I heard something behind me and I turned around to see Tiffy standing in the

entrance doorway. At that time I could clearly see a pistol in Tiffany's hand. I told Tiffany to go call an ambulance for her mother. Marilyn told Tiffany to do as I told her.

I realized that Tiffany would also most likely call Marilyn's father Jim Arbaugh too and I also knew that Jim Arbaugh had a lot of guns and I knew if he got there before the police, another gun battle might erupt. I said as much to Marilyn and then I walked to the back door of the alleyway.

I stood outside the back door of the alleyway for a few moments not knowing which way to go or what to do. I wanted to wait for the police but I was afraid that Marilyn's father would show up first. After a short time I heard voices. When I looked back in the doorway down the alley in the direction where I had left Marilyn I could see Tiffany there with her. They were talking to each other but I could not make out what they were saying. I then looked over at the highway and saw a vehicle traveling at high speed towards the "El Rancho 93". This caused me to panic even more so I ran down to a low spot near a hay field about 200 yards from the barn where Marilyn and Tiffany were.

page - 7 - of - 8 -

I stood in that location near the hay field until I seen a police car drive to a location just a short distance from me. I then whistled and waved my arms to attract the officers attention. When the officer's approached me, there were two of them, I told them where the rifle was and then they took me into custody.

Goden I swear to you that this is what happened that day out there.

Please contact the "Obenchain" girls as soon as possible to confirm my story. Vallery Obenchain was in the Alley bar the same night Marilyn and I were there just a few nights before all this happened. Please investigate everything you can to prove my story. I am awfully scared.

Sincerely,

Laimi Dean Charbonneau  
Laimi Dean Charbonneau

(Jerome County Jail)

August 12, 1984

## **EXHIBIT 11**



EXHIBIT #11

300 North Lincoln  
Albany, Idaho 83328

M.A.

TO: MR. BENNETT

FROM: (M) 1-1-17-X-1) ADEL

WAT. B. BENNETT

MR. BENNETT

Today when you & your secretary came here to the jail to see me you told me that you would send my letter that I had written. As Mr. Conley asked me to write something my version of the events that took place on the day of the incident. One thing that I forgot to say in my letter is that as we were told me it that we found ourselves in the jail the one that I had written that I had written. Please look at it when you see it.

When I will it, they would it. This is a diagram of the evidence that is on the 5700's part of the evidence file. That is the rifle that she brought back out to the room. The rifle is in the room in the room as I explained to you. When the police arrived at the scene I was told to show myself to the police. I was told to show myself to the police. That the rifle I had was a Remington-Union on the ground by the fence. I had heard the rifle of myself the fence so I could use my hands to write it. I told them that the rifle was taken down by the fence.

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2011 OCT 31 AM 11 50

*Michelle Emerson*

BY

*Allen*

DEPUTY CLERK

BRIAN M. TANNER  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Fascimile: (208) 734-2383  
Idaho State Bar #7450

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

\*\*\*\*\*

JAIMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV. 2011-638

NOTICE OF HEARING

\*\*\*\*\*

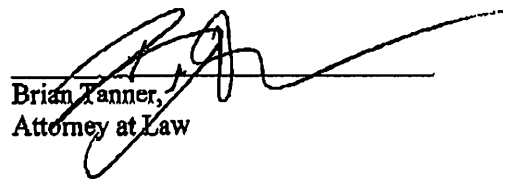
TO: Jerome County Prosecutor

YOU WILL PLEASE take notice that the Petitioner will bring on for hearing before The Honorable Judge Elgee, at the Jerome County Courthouse, Jerome, Idaho, at the hour of 2:30 on the 16th day of December, 2011, or as soon thereafter as counsel can be heard, the following:

1. Response to Notice of Court's Intent to Dismiss pursuant to I.C. §19-4906 and Request for Evidentiary Hearing;
2. Amended Petition for Post-Conviction Relief;

3. Motion to request a ruling on the petitioner's motion to allow petitioner access to property for the purpose of obtaining evidence and verified petition to enter and inspect real property;
4. Motion to appoint a writing sample expert at county expense;

Dated this <sup><</sup>31 day of October, 2011.

  
Brian Tanner,  
Attorney at Law

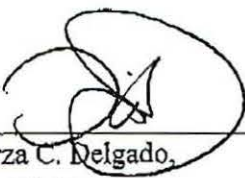
**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 31st day of October, 2011, I caused a true and correct copy of the foregoing NOTICE OF HEARING to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

*Copy mailed to  
Judge Elze*

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary



electronic exchanges reveal and describe a preexisting conspiracy by the above-named correctional officers and Marc Haws<sup>1</sup> to illegally intercept, seize and confiscate Petitioner's mail, and referred to therein as the "Charboneau mission". This document is labeled as *Exhibit A*, in my Amended Petition. I had no idea or knowledge of the existence of this document prior to March 18, 2011, nor had I ever seen this document before.

ii. A handwritten note authored by A. Dwayne Shedd and dated June 27, 2003. The note reflects a conspiracy to confiscate my mail between Dewayne A. Shedd and Lt. William Under, but also describes the participation of Deputy Attorney General Tim McNeese. This document is labeled as *Exhibit B*, in my Amended Petition. I had no idea or knowledge of the existence of this document prior to March 18, 2011, nor had I ever seen this document before.

iii. A copy of a sworn statement of former Jerome County Sheriff Larry Gold ("Statement"), dated November 13, 2001. This document is labeled as *Exhibit C*, in my Amended Petition. I had no idea or knowledge of the existence of this document prior to March 18, 2011, nor had I ever seen this document before.

iv. A copy of a letter written by Larry Gold on June 3, 2001. This document is labeled as *Exhibit D* in my Amended Petition. I have seen this letter before and was aware of it prior to March 18, 2011. This letter is not new evidence.

v. A handwritten note by an unknown author who alleges that he/she witnessed Cheryl Watts intercept a letter addressed to Judge Becker from Tira Arbaugh, dated September 7, 1989. This document is labeled as *Exhibit E* in my Amended Petition. I had no idea or

---

<sup>1</sup> Marc Haws was the Special Deputy Attorney General who prosecuted Petitioner through the trial proceedings on behalf of Jerome County.

knowledge of the existence of this document prior to March 18, 2011, nor had I ever seen this document before.

vi. An envelope addressed to Jerome County Judge Philip Becker from Tira Arbaugh and post stamped September 7, 1989. This document is labeled as *Exhibit F* in my Amended Petition. I had no idea or knowledge of the existence of this document prior to March 18, 2011, nor had I ever seen this document before.

vii. A seven page letter from Tira Arbaugh Holman, dated and signed September 6, 1989. This document is labeled as *Exhibit G* in my Amended Petition. I had no idea or knowledge of the existence of this document prior to March 18, 2011, nor had I ever seen this document before. I had heard previously that one of the guns which should have been part of the evidence, had been buried. I had never heard the circumstances of the burial as described in the letter, nor any of the other information described in the letter.

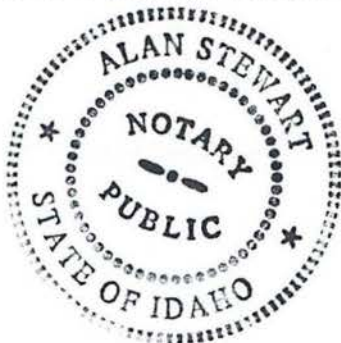
4. That on March 19, 2011, one day after Officer Mike Hiskett gave me the packet, which is described above as Exhibits A through G in the Amended Petition, I prepared a concern form addressed to Officer Mike Hiskett. In the concern form, I describe how Officer Mike Hiskett discovered the packet and the circumstances regarding his delivery of the packet to me. Essentially, the packet was found by Officer Hiskett in an officer's security station. When Officer Hiskett discovered the packet, he gave it to me for review. *See Exhibit A*, attached hereto.

5. That after receiving this packet, I forwarded the contents to Greg Silvey, who is an attorney in Kuna, Idaho and has assisted me in the past.

Further your Affiant sayeth naught.

Jaime Dean Charboneau  
Jaime Dean Charboneau

SUBSCRIBED AND SWORN before me this 29 day of November, 2011.



Alan Stewart  
NOTARY PUBLIC for Idaho

Residing at: Idaho

My Commission Expires: 5/16/2014

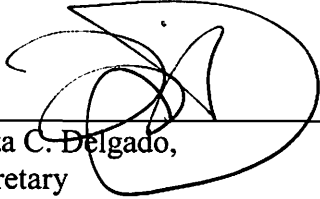


CERTIFICATE OF SERVICE

The undersigned certifies that on the 6th day of December, 2011, she caused a true and correct copy of the foregoing **AFFIDAVIT OF JAIME DEAN CHARBONEAU** to be served upon the following persons in the following manner.

Jerome County Prosecutor

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

## **EXHIBIT A**

3/21/11  
SAB

IDOC Offender Concern Form

Offender Name: Charboneau, Jaimi Dean IDOC Number: 22091  
Institution, Housing Unit, & Cell: 1C1-0, C-2 / A-1 Date: 3-19-11

To: Officer Hiskett  
(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: Officer Hiskett on Friday March 18, 2011, while you were working the Charlie-2 unit you approached me in my cell at approximately 1:00 p.m. To inform me that you had found a large white envelope in amongst some other old paper work in the unit office. You told me that you had noticed that my name and inmate number was written on the large envelope that you found. This sealed envelope had the phrase "legal documents" written on it and the signature of A. Dewayne Shedd was visible over the seal of the envelope. continued...  
(Description of the issue must be written only on the lines provided above.)

Offender signature: Jaimi Dean Charboneau page (1) of (4)

Staff Section

Staff signature: [Signature] Associate ID #: 9898  
(Staff member acknowledging receipt)

Reply: yes I did find a white envelope in the Charlie-2 unit on 18th of March @ 1300 hrs and brought it to you  
CPI (Jaimi Dean) 1253 3-21-11  
Responding staff signature Associate ID # Date

Distribution: Pink part returned to offender after receiving staff's signature. Original(white) and yellow forwarded to appropriate responding staff.  
Appropriate responding staff will complete reply field and return yellow part to offender.

PRT\MCROCF

# IDOC Offender Concern Form

3/12/11  
AAB

Offender Name: Charboneau Jaimi Dean IDOC Number: 22091  
Institution, Housing Unit, & Cell: IC1-0, C-2 / A-1 Date: 3-19-11

To: Officer Hiskett  
(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: When you brought this envelope to me I thought that you were delivering legal mail to me that had just arrived for me, however, you explained that it was not legal mail just an envelope with my name on it. While in your presence, I looked inside the large white envelope and found several legal type documents inside and they all related to me. There was also a hand written note signed by "A. Dewayne Shedd" and another hand written note that was attached to a copy of a small envelope that had a postage stamp and a post office cancellation mark visible on it. Continued...  
(Description of the issue must be written only on the lines provided above.)

Page (2) of (4)

Offender signature: Jaimi Dean Charboneau

## Staff Section

Staff signature: A. Pabel Associate ID #: 9892  
(Staff member acknowledging receipt)

Response:

Responding staff signature \_\_\_\_\_ Associate ID # \_\_\_\_\_ Date \_\_\_\_\_

Distribution: Pink part returned to offender after receiving staff's signature. Original (white) and yellow forwarded to appropriate responding staff.  
Appropriate responding staff will complete reply field and return yellow part to offender.

PRT3NCROCF

IDOC Offender Concern Form

Offender Name: Charboneau Jaimi Dean

IDOC Number: 22091

Institution, Housing Unit, & Cell: IC1-6, C-2/A-1

Date: 3-19-11

To: Officer Hiskett

(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: I pointed out the fact to you that the "send to" address on the small envelope had the name "Philip Becker" on it and I told you that I had recognized his name because he was my trial judge. There was also another small envelope inside the large envelope which had the following written on it. (in red ink was: "B-28 Forward to IC10 Legal Docs 12-5-02" in purple ink was: "Inmate Charboneau 22091 U-9 B-28 A"). This small envelope was sealed and written across the seal was: (Received 01-06-03 A. Dewayne Shedd). Officer Hiskett, in the event that I may need to verify this information at some point in the future  
(Description of the issue must be written only on the lines provided above.) Continued...

Offender signature: Jaimi Dean Charboneau

Page (3) of (4)

Staff Section

Staff signature: [Signature]  
(Staff member acknowledging receipt)

Associate ID #: 9898

R:

Responding staff signature

Associate ID #

Date

Distribution: Pink part returned to offender after receiving staff's signature. Original(white) and yellow forwarded to appropriate responding staff.  
Appropriate responding staff will complete reply field and return yellow part to offender.

PRT3NCROCF

IDOC Offender Concern Form

Offender Name: Charboneau Jaimi Dean IDOC Number: 22091  
 Institution, Housing Unit, & Cell: C1-6, C-2 / A-1 Date: 3-19-11

To: Officer Hiskett  
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: Concerning that large white envelope and it's contents that you found in the wait office on Charlie-2, will you please confirm that you did in fact find that large white envelope in the wait office on Charlie-2 as I have described here. Thank you very much for your time, I truly appreciate your honesty and integrity.  
The end.

(Description of the issue must be written only on the lines provided above.)  
 Offender signature: Jaimi Dean Charboneau Page (4) of (4)

Staff Section  
 Staff signature: A. J. [Signature] Associate ID #: 9898  
 (Staff member acknowledging receipt)

By: yes I did find a white envelope on Friday  
the 18th of March and then gave it to you. At 1300 hrs  
 Responding staff signature: [Signature] Associate ID #: 4283 Date: 3-21-11

Distribution: Pink part returned to offender after receiving staff's signature. Original(white) and yellow forwarded to appropriate responding staff.  
 Appropriate responding staff will complete reply field and return yellow part to offender.

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Phone: 208.735.5158  
Fax: 208.734.2383  
ISB #7450

Attorney for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2011 DEC 7 PM 4 58

*Michelle Emerson*

BY *[Signature]*  
CLERK  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

JAIMI DEAN CHARBONEAU, )

Petitioner, )

v. )

THE STATE OF IDAHO, )

Respondent. )

Case No. CV-2011-638

**SUPPLEMENTAL RESPONSE TO  
COURT'S INTENT TO DISMISS  
PURSUANT TO I.C. §19-4906  
AND REQUEST FOR  
EVIDENTIARY HEARING**

COMES NOW the above-named Petitioner, by and through his attorney of record,  
BRIAN TANNER, hereby submits this Supplemental Response to the Court's Intent to Dismiss  
Pursuant to I.C. §19-4906

This supplemental response will briefly provide the standard for allowing a successive  
petition for post conviction relief, despite the petition having been filed over a year and forty two  
days after the Judgment of Conviction. The Supplemental Response will also focus on the  
definition of "new evidence" for purposes of aiding the court in deciding whether the Amended  
Petition meets the summary dismissal threshold outlined in Idaho's Post Conviction Statutes.

SUPPLEMENTAL RESPONSE TO COURT'S INTENT TO DISMISS PURSUANT TO I.C. §  
19-4906 AND REQUEST FOR EVIDENTIARY HEARING - 1

Finally, this Supplemental Response, will discuss again, for the Court's convenience, why the new information outlined in the Amended Petition is important.

#### **A. Sufficient Reason for a Successive Petition**

A petition for post-conviction relief under the Uniform Post Conviction Procedure Act (UPCPA) is civil in nature. *Charboneau v. State*, 144 Idaho 900, 903, 174 P.3d 870, 873 (2007). The petitioner must prove the claims upon which the petition is based by a preponderance of the evidence. *Id.* Summary disposition of a petition for post-conviction relief is not appropriate if the applicant's evidence raises genuine issues of material fact. I.C. § 19-4906(b), (c); *Charboneau*, 144 Idaho at 903, 174 P.3d at 873. When the alleged facts, even if true, would not entitle the applicant to relief, the trial court may dismiss the application without holding an evidentiary hearing. *Charboneau*, 144 Idaho at 903, 174 P.3d at 873; *Stuart v. State*, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990); *Cooper v. State*, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975). On review of a dismissal of a post-conviction relief application without an evidentiary hearing, we determine whether a genuine issue of fact exists based on the pleading, deposition, and admissions together with any affidavits on file. *Rhoades v. State*, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009); *Ricca v. State*, 124 Idaho 894, 896, 865 P.2d 985, 987 (Ct. App. 1993).

All claims for post-conviction relief must be raised in an original, supplemental, or amended application. I.C. § 19-4908. The application must be filed within one year from the expiration of the time for appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later. I.C. § 19-4902. Successive petitions are impermissible "unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application." I.C. § 19-4908. While Section 19-4908 sets forth no fixed time within which successive petitions may be filed, the "sufficient reason" language in the statute necessarily provides "a reasonable time within which such



claims may be asserted in a successive post-conviction petition, once those claims are known.” *Charboneau*, 144 Idaho at 905, 174 P.3d at 875. The determination of what is a reasonable time is considered on a case-by-case basis. *Id.*

In *Stuart v. State*, 118 Idaho 865, 801 P.2d 1216 (Idaho 1990), the defendant was charged and convicted with murder. He filed a petition for post conviction relief, alleging that "newly discovered evidence, not available to him at the time of trial, has created a material issue of fact which would affect the conviction and/or the sentence imposed on him." *Id.* at 869. The Idaho Supreme Court in that cases stated:

"In analyzing the evidence produced at trial with this new evidence, this court must determine whether a substantial question of fact exists which would probably change the conviction or sentence, thus, requiring an evidentiary hearing...."

The petitioner in a post conviction relief proceeding has the burden of proving, by a preponderance of the evidence, the allegations which he contends entitle him to relief. *Estes v. State*, 111 Idaho 430, 725 P.2d 135 (1986). In analyzing a petition for post conviction relief, to determine whether or not a hearing is required, the standard which a district court must follow was set out in *Cooper v. State*, 96 Idaho 542, 531 P.2d 1187 (1975):

When the alleged facts, even if true, would not entitle the applicant to relief, the trial court may dismiss the application without holding an evidentiary hearing. ... Allegations contained in the application are insufficient for the granting of relief when they are clearly disproved by the record of the original proceedings, or do not justify relief as a matter of law. 96 Idaho at 545, 531 P.2d at 1190 (emphasis added). The requirements for obtaining a new trial based upon newly discovered evidence were set out in *State v. Drapeau*, 97 Idaho 685, 551 P.2d 972 (1976), where this Court, quoting from 2 C. Wright, Federal Practice & Procedure: Criminal § 557 (1969), stated:

Accordingly, rather exacting standards have been developed by the courts for motions of this kind. A motion based on newly discovered evidence must disclose (1) that the evidence is newly discovered and was unknown to the defendant at the time of trial; (2) that the evidence is material, not merely cumulative or impeaching; (3) that it will probably produce an acquittal; and (4) that failure to learn of the evidence was due to no lack of diligence on the part of the defendant. 97 Idaho at 691, 551 P.2d at 978. *Stuart v. State* at 869.

**B. New Evidence standards as defined in *State v. Drapeau*.**

Based on the new evidence standard articulated in *State v. Drapeau*, 97 Idaho 685, 551 P.2d 972 (1976), the Petitioner, when presenting a motion based on new evidence must demonstrate that (1) the evidence is newly discovered and was unknown to the defendant at the time of trial; (2) that the evidence is material, not merely cumulative or impeaching; (3) that it will probably produce an acquittal; and (4) that failure to learn of the evidence was due to no lack of diligence on the part of the defendant.

B1. The failure to provide new evidence is not based on lack of diligence.

The first and fourth elements are addressed in the Affidavit of Jaime Charboneau which is filed separately along with this Supplemental Response. In Mr. Charboeau's affidavit, he states that he discovered a packet of documents which were presented to him by Idaho Department of Corrections Officer, Mike Hiskett on March 18, 2011. These documents are found in the Petitioner's Amended Application for post conviction relief. Among the documents found in the packet is a 7 page letter from Tira Arbaugh which describes her sister as possessing a new rifle, recently purchased by her mother, Marilyn Arbaugh. The letter also describes how Mark Haws asked Tira to bury the "Calamity Jane" rifle. The letter additionally describes how the officers told Tira to write that she heard additional shots after she reentered her home. The remainder of the documents which were found in the packet reveal a frankly sinister cover up by several officers to deprive the Petitioner the opportunity of using the Tira Arbaugh letter either for purposes of a new trial or a new sentence.

Because these documents are newly discovered and because the failure to learn of the evidence was not due to lack of diligence on the part of the petitioner, but rather resulted from an extremely serious, sinister and coordinated effort by legal officers to deprive the petitioner of exculpatory evidence, it cannot be stated that failure to produce them earlier is the result of a lack

of diligence on the part of the Petitioner. The Petitioner should not be prejudiced because of the cover up efforts of Dewayne Shedd, Officer Unger and Mark Haws.

B2. The concealed Tira Arbaugh letter and weapons are material and may lead to a reversal of conviction.

Under *State v. Drapeau*, the Petitioner must also demonstrate that the evidence is material, not merely cumulative or impeaching and that it will probably produce an acquittal.<sup>1</sup>

The letter written by Tira Arbaugh prior to Mr. Charboneau's second sentencing is explosive for the following simple reasons. First, this letter puts the murder weapon, identified as Exhibit #57 at trial, the Nylon Remington Rifle, which Marilyn had recently purchased for her daughter Tiffany Arbaugh, not in the hands of Jaime Charboneau, but in the hands of Tiffany Arbaugh. The Petitioner has stated from the beginning (in a letter to his first counsel, Golden Bennett, which is part of the Petitioner's first Response) that he was involved in a shoot out in which Tiffany and Tira Arbaugh were shooting from one side and Marilyn Arbaugh on the other. The Petitioner was directly between the two Arbaugh sisters and Marilyn Arbaugh and was shooting the "Calamity Jane" rifle from the hip from behind a post in order to defend himself. If the murder weapon is not in the hands of the murderer, than this is a serious problem for the prosecution.

Additionally, it is clear from Tira Arbaugh's letter that she was requested by a Jerome police officer to change her testimony. According to her letter, in response to a request from a Jerome County investigator, she added testimony and stated that she heard additional shots after she went inside.<sup>2</sup> It is clear from Tira Arbaugh's original witness statement that she added a line

---

<sup>1</sup> Idaho's post conviction statutes provide relief not only for a new trial based on acquittal evidence but also for a new sentence if the evidence demonstrates that this is appropriate. I.C. § 19-4908.

<sup>2</sup> Please refer to the writing sample from Tira Arbaugh, presented in Petitioners original Response. This is Tira Arbaugh's original witness statement.

on a completely different piece of paper in which she simply stated that she heard additional shots. There is no other statement on this separate piece of paper. *See Exhibit A.*

The interjection of additional shots is critical to the State's case because it is based on the additional shots that the State can prove 1st degree murder. In other words, the State needs to be able to say that only after the shoot out did Mr. Charboneau approach his wife Marilyn and shoot her at close range. The State can't prove intent to murder based on a shoot out in which the Defendant is defending himself while taking fire from both sides.

The identity of the person who possessed the murder weapon is extremely important. If none of the other weapons are introduced at trial or tested, how can it be determined definitively that only Mr. Charboneau possessed the murder weapon and not one of the other Arbaugh girls, especially Tiffany since she is identified by Tira as possessing the murder weapon. It should be noted that a gun was found in the attic at the Jerome county courthouse in 1992 - after trial and after the Petitioner's resentencing - and this weapon was later identified by Sheriff Mito Alonso as one of the guns in the Charboneau case. *See Exhibit B.* One is inclined to ask why a valuable piece of evidence was hidden in the attic instead of presented at trial. This further leads to an arousal of suspicion that the Jerome county police officers and detectives manipulated and hid evidence and carefully developed fabricated testimony.

Tiffany Arbaugh first told law enforcement officers that she possessed a .22 rifle, fitting the description of the nylon remington rifle introduced at trial as the murder weapon and this is what is reflected in the Affidavit of Probable Cause and addressed at trial by Elza Hall. *See Exhibit C.* This however, is not what was represented during trial by Tiffany Arbaugh. At trial, Tiffany Arbaugh testified that she possessed and shot a Ruger pistol, not the .22 rifle. This Ruger pistol however has disappeared. It was never introduced at trial.

This case is based entirely on circumstantial evidence. There are no eye witnesses who actually saw the Defendant, Jaime Charboneau, point a gun at Marilyn Arbaugh and shoot her. Instead, the two Arbaugh girls testified at trial that they heard additional shots after the shoot out and after they reentered the home. It was at this time, supposedly, that the Petitioner shot his wife.

The Petitioner has presented evidence in his Amended Petition which directly addresses and contradicts the heart of the State's circumstantial evidence and in fact supports his own original statement to Golden Bennett regarding what happened. The Tira Arbaugh letter, carefully concealed for 27 years by multiple law enforcement officers and court personnel, pointedly refutes the State's theory regarding possession of the murder weapon and the alleged fact that additional shots were fired after the initial shoot out. This type of evidence demands further investigation. For this reason, the Petitioner requests that he be allowed to pursue this case to an evidentiary hearing.

Respectfully Submitted This 10 day of December, 2011.


  
Brian M. Tanner

CERTIFICATE OF SERVICE

The undersigned certifies that on the 04th day of December, 2011, she caused a true and correct copy of the foregoing **SUPPLEMENTAL RESPONSE TO COURT'S INTENT TO DISMISS PURSUANT TO I.C. §19-4906 AND REQUEST FOR EVIDENTIARY HEARING** to be served upon the following persons in the following manner.

Jerome County Prosecutor

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

## **EXHIBIT A**

I woke up this morning about 11:00 this morning mom woke me up. She kisses + I woke up. She had brought me home some Western Horse Magazine + She took a bath. AS SOON AS she got out I got in. I was reading the magazine in the bathroom + I heard mom scream and I heard a bunch of bustling out of the door. About 10 min before I heard her scream she had come in the house and asked us if we had let the noises into the other rooms + then she went outside. After I heard her scream Tif came into the bathroom + screamed for me to get out of the bathroom + get dressed. She had already called the police. I got dressed + ran outside. Tif told me to stay behind sheep wagon. I could hear Jamie in the barn way little. Then I ran back into the house + changed clothes while Tif + the Keys to the Truck. We ran back outside.

EXHIBIT "J"  
1 - 2

Tina Arbaugh



STATEMENT OF:

and waited for Jamie to  
leave then Tip ran into the ally  
of the barn to mom. I got there  
right after Tip + Tip had mom  
in her arms. She pulled back her  
shirt + she had about 4 or 5 bullet  
holes in her chest. She was bleeding  
from her mouth + nose. I touched  
her cheeks + then ran out of the  
barn to call the police. I could hear  
Tip crying + screaming. By the  
time I got through to the police  
I was too shocked up to talk + hung  
up. I ran outside and Officer  
Giesal was up the lane. As soon  
as I saw him I ran to the phone  
and called Mike Johnson + then Mary  
+ Jim Aubraugh. Then I ran back  
to mom.

T.R.A.

T.R.A.

T.R.A.

T.R.A.

Dina Aubraugh  
Hallman

while we were dressing. We  
said about 5 more shots.

T.R.A.

T.R.A.

T.R.A.

T.R.A.

Lisa Allbaugh;

Halman

## **EXHIBIT B**

**Sworn Statement**

**Melvin Wright**  
**409 5<sup>th</sup> Street NE**  
**Barnesville MN 56512**  
**218-354-7212**

I, Melvin Wright was employed at the Jerome County Court House, and in the course of my duties as custodian of the Jerome County Court house, had on many occasions gone to the roof of the court house through the attic, and sometime between 1992-1993, I recall a brown paper bag to which I had seen on several occasions and thought that it was just garbage. I finally retrieved the brown paper bag from within the crawl space of the attic and found a gun hidden inside the paper bag. I immediately took the bag containing a gun to Mario Dalry, my supervisor, and we took the gun to the County Commissioners, who then called the Sheriff, and Under-Sheriff, and the prosecutor. I explained where the gun was found and I was then excused from the meeting with the above named people. I am willing, to cooperate about this factual knowledge of this particular issue.

Melvin Wright 11-11-08

Melvin Wright

date

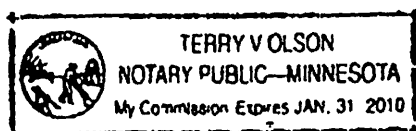
SUBSCRIBED AND SWORN To before me this 11 day of Nov. 2008

Terry V. Olson

Notary Public for \_\_\_\_\_

Residing at: \_\_\_\_\_

My Commission Expires. \_\_\_\_\_



1                   VENABLE: I promise you. No, I didn't. No, I'm  
2 just thinking -

*Reason for Mel Wright's Statement*

3                   ALONZO: The firearm that was discovered in the  
4 attic of the courthouse was - was not one that he used, okay.  
5 And so it was found by the janitor of the building. And he  
6 immediately, before he touched any of these, got ahold of us,  
7 myself and the sheriff. He said, I just found a gun in the  
8 attic so it can be responded and it was from the Charboneau  
9 case guns, but it was not the one that he used.

10                  The sheriff's department, the way it operated  
11 before Larry Gold and I took over the department was kind of  
12 like -

13                  VENABLE: I love Larry Gold by the way, I don't  
14 know what your feelings are, but I like him.

15                  ALONZO: He's my best friend.

16                  VENABLE: Wonderful.

17                  ALONZO: Yeah. I learned a lot from Larry and he's  
18 a good man, very knowledgeable -

19                  VENABLE: It's been an absolute gold mine to help  
20 me understand this particular case.

21                  ALONZO: Yeah, yeah, he's very knowledgeable.

22 Actually the Charboneau case, the crime happened before Larry  
23 Gold was in office. Elsa Hall was the sheriff, Larry Webb  
24 was the undersheriff. You know, these guys, my personal  
25 opinion there were gun smoke, you know, type law enforcement,

## **EXHIBIT C**

1 ELZA HALL,

2 recalled as a witness at the instance of the defendant,  
3 being first duly sworn, was examined and testified as  
4 follows:

5 DIRECT EXAMINATION BY MR. STOKER:

6 Q. Sheriff, earlier this morning we were talking  
7 about a conversation that you had with Tiffnie Arbaugh.

8 Do you recall having that conversation?

9 A. I had a conversation at her place.

10 Q. Did you ask her about what she knew about the  
11 incident?

12 A. I asked her what happened out there.

13 Q. And did you ask her if she had been involved  
14 with any type of a weapon?

15 A. No, sir, I didn't ask her that.

16 Q. Did she tell you?

17 A. Yes, sir. She said that, that he had a gun, and  
18 he went out the back end. And they had a .22, they run out  
19 of the house with a .22.

20 Q. Did she tell you that she ran out of the house  
21 with a .22 rifle?

22 A. I don't remember that. I remember it was .22.  
23 I don't remember if it was a rifle or what.

24 Q. During the recess have you looked at the  
25 probable cause affidavit that you filed with this Court?

1 A. I looked at a portion of it.

2 Q. And did you acknowledge in that probable cause  
3 statement that Tiffnie Arbaugh told you she had a .22 rifle?

4 A. I noticed it in the statement, yes, I did.

5 Q. That statement was under oath, wasn't it?

6 A. Sir, I don't know if the -- I said she told me  
7 that or that was in the statement from one of the other  
8 deputies.

9 Q. Was the probable cause affidavit under oath?

10 A. Yes, it was.

11 Q. And you signed that to the best of your  
12 knowledge, didn't you?

13 A. To the best of my knowledge, I did.

14 Q. And did you sign it on the basis of what was  
15 represented to you?

16 A. Yes, I did.

17 MR. STOKER: That's all the questions I have of this  
18 witness, your Honor.

19 THE COURT: Do you wish to cross-examine, Mr. Haws?

20 MR. HAWS: Yes, your Honor.

21

22

23 CROSS EXAMINATION BY MR. HAWS:

24 Q. So at this time, Sheriff, you're not sure what  
25 was said in that conversation with Tiffnie on the 1st of



1 July?

2 A. I'm sure there was a .22.

3 Q. You're sure that she said she had a .22?

4 A. Yes.

5 Q. Okay. But you can't state whether she said she  
6 had a .22 pistol or whether she had a .22 rifle or whether  
7 she just said she had a .22; is that right?

8 A. To the best of my knowledge, she said she had a  
9 .22. I can't define it whether it was a rifle or a .22  
10 pistol.

11 Q. Did she say whose .22 she had? Did she say it  
12 was her mother's .22? Do you remember her saying?

13 A. She didn't say.

14 Q. She didn't say, or you don't remember?

15 A. I don't remember which one she said.

16 Q. So, you might have got the information that you  
17 have in your probable cause statement from one of your  
18 deputies or somebody else; is that right?

19 A. That's right.

20 Q. And so far as you know, you don't know where  
21 that came from; they may have made an assumption that it was  
22 a .22 rifle. Is that what you're saying?

23 A. I'm saying they made those statements and it  
24 could have been from one of the other people.

25 Q. So it could have just been an assumption from

1 somebody that was there in the office?

2 A. That's right.

3 Q. At the time you filed that probable cause  
4 statement, I take it, Sheriff, you had not done a completed  
5 investigation as yet; is that right?

6 A. No, sir, we hadn't.

7 Q. And in fact, a probable cause statement is just  
8 that, it's something that gets the charges moving, isn't it?

9 A. It's to get the charges so we can go ahead and  
10 get a warrant of arrest and start our investigation.

11 Q. So it may be based upon incomplete information  
12 then; is that correct?

13 A. I didn't understand that, sir.

14 Q. I say when you filed probable cause, that could  
15 be based upon incomplete information; is that correct?

16 A. Yes, sir.

17 MR. HAWS: Okay. I have no further questions.

18 THE COURT: Redirect.

19

20

21 REDIRECT EXAMINATION BY MR. STOKER:

22 Q. Sheriff, is it a fair statement that you don't  
23 go around making up evidence?

24 A. Yes, sir, I don't make up evidence.

25 Q. I don't think you do. You've been in law

1 enforcement how long?

2 A. Oh, about 21, 22 years.

3 Q. Do you deny that you received information that  
4 Tiffnie Arbaugh took her mother's .22 rifle out to the  
5 alley?

6 A. Yes, sir. I did receive information of that,  
7 but I don't know if it was that time out there, or I don't  
8 know if it was later.

9 Q. And you just didn't make that up, did you?

10 A. No, sir, I didn't make up the probable cause  
11 statement. The probable cause was made up by my records  
12 clerk that makes up the probable cause statement from all  
13 reports.

14 Q. So I take it that somebody at some point must  
15 have indicated that this young lady said she had a .22  
16 rifle?

17 MR. HAWS: Well, objection, your Honor. That's a  
18 conclusion, and that this witness can't draw. That's  
19 speculation and argument.

20 THE COURT: Objection sustained.

21 MR. STOKER: I think we are going nowhere with this  
22 line of questioning, your Honor, and I have no other  
23 questions.

24 THE COURT: Thank you.

25 MR. HAWS: I just have one question, your Honor.

1 RE CROSS EXAMINATION BY MR. HAWS:

2 Q. Did I hear you say correctly that you didn't  
3 even prepare that probable cause statement, Sheriff, that  
4 your records clerk prepared it?

5 A. Yes, sir.

6 Q. And then the chief signed it?

7 A. Yes, sir.

8 Q. So this could have been an assumption on the  
9 part of the records clerk?

10 A. I doubt that very much, sir. I imagine she got  
11 it from some portion of the investigation.

12 Q. From somebody else's statement; is that right?

13 A. Very probably.

14 Q. Could have been hearsay upon hearsay?

15 A. I doubt that. I think it came from another  
16 record.

17 MR. HAWS: I have no further questions.

18 THE COURT: Thank you, Sheriff. You may step down.

19 MR. STOKER: May this witness be excused from  
20 subpoena, your Honor?

21 MR. HAWS: No objection.

22 THE COURT: All right, Sheriff. You may be released  
23 from the subpoena of the court; however, let me admonish  
24 you, do not discuss this testimony with anyone else until  
25 this is submitted to the jury.

1 Does this mean that the Sheriff may remain in  
2 the courtroom if he so desires?

3 MR. HAWS: I have no objection, your Honor.

4 THE COURT: Sheriff, you may remain in the courtroom  
5 or leave, whatever you want.

6 Call your next witness.

7 MR. STOKER: The defense would call Golden Bennett to  
8 the stand.

9 THE COURT: Could I see both counsel up here for a  
10 moment.

11 (Discussion held off the record.)

12  
13 (Whereupon the clerk administered the  
14 oath to Mr. Bennett.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2011 DEC 8 PM 3 59

*Michelle F. Emmons*  
CLERK

BY

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR JEROME COUNTY

|                        |   |                       |
|------------------------|---|-----------------------|
| JAIMI DEAN CHARBONEAU, | ) |                       |
|                        | ) |                       |
| Petitioner,            | ) | Case No.: CV-2011-638 |
| vs.                    | ) |                       |
|                        | ) |                       |
| STATE OF IDAHO,        | ) | PROCEDURAL ORDER      |
|                        | ) |                       |
| Respondent.            | ) |                       |

The very first question is whether the petitioner has stated a claim for relief. Any motions to search for evidence in the form of a gun on someone else's property, any motions to appoint a writing sample expert at county expense, or any motions requesting an evidentiary hearing are premature because they all are requests to gather or present evidence when, again, the very first question is whether Mr. Charboneau has stated a claim for relief.

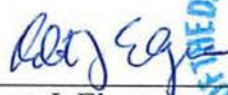
This first question as to whether Mr. Charboneau has stated a claim for relief in this new petition for post-conviction relief will be tested one of two ways; either the Court will look at Mr. Charboneau's Amended Petition, filed Oct 25, 2011, and determine whether his claim is still subject to dismissal as the Court indicated in its Notice of Intent to Dismiss, or the pleadings will be tested when and if the state files a motion to dismiss for failure to state a claim. Mr. Charboneau's request for an evidentiary hearing, his motion to allow access to property for the

purpose of obtaining evidence and/or to inspect real property, and his motion to appoint a writing sample expert, are hereby DENIED without prejudice.

The question of whether there is evidence to support Mr. Charboneau's claims is different than the question of whether he has stated a claim for relief. Whether there is evidence to support his claims will only be examined if he is able to state a viable claim, *assuming he can prove what he claims*. All hearings set for Friday, December 16, 2011 are cancelled, and instead the Court will conduct a conference with counsel in order to 1) schedule a cut-off date by which the Court will review and rule upon whether Mr. Charboneau's Amended Petition states a viable claim, and 2) discuss with counsel when and if the state will file a motion to dismiss for failure to state a claim, and possible hearing dates for any such motion.

IT IS SO ORDERED.

Dated this 8 day of December, 2011

  
Robert J. Elgee  
District Judge



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of December, 2011, I caused to be served a true copy of the foregoing ORDER, document by the method indicated below, and addressed to each of the following:

Brian M. Tanner  
Attorney at Law  
137 Gooding Street West  
Twin Falls, ID 83301  
Fax: (208) 734-2383

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ FAX

Jerome County Prosecutor  
233 W. Main  
Jerome, ID 83333  
Fax: 644-2639

☒ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ FAX

  
\_\_\_\_\_  
Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

233 WEST MAIN STREET

JEROME, IDAHO 83338

DISTRICT COURT

FIFTH JUDICIAL DIST

JAIMI DEAN CHARBONEAU #22091, PLAINTIFF, COUNTY IDAHO

Plaintiff,

2011 DEC 14 PM 4 07

vs

STATE OF IDAHO, DEFENDANT,

Defendant.

BY

DEPUTY CLERK

Case No: CV-2011-0000638

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Hearing Scheduled

Judge:

Courtroom:

Friday, December 16, 2011 02:30 PM

Robert Elgee

Jerome County Chambers

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Wednesday, December 14, 2011.

Counsel:

BRIAN M. TANNER

137 GOODING ST. W

TWIN FALLS ID 83301

Mailed ☒

Hand Delivered ☐ faxed 734-2383 ☐

Counsel:

MIKE SEIB

233 W. MAIN ST.

JEROME ID 83338

Mailed ☐

Hand Delivered ☒

Dated: Wednesday, December 14, 2011

Michelle Emerson

Clerk Of The District Court

By:

Deputy Clerk

Jaimi D. Charboneau, #22091  
ISCI - Unit 11, A-15-B  
P.O. Box 14  
Boise, Idaho 83707-0014

2011 DEC 15 PM 3 32

*Michelle Emerson*  
CLERK  
DEPUTY CLERK

Petitioner / In Propria Persona

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI D. CHARBONEAU, )  
Petitioner, )  
)  
)  
-vs- )  
)  
)  
STATE OF IDAHO, )  
Respondent, )  
\_\_\_\_\_ )

CASE # CV2011-638  
MOTION REQUESTING ISSUANCE  
OF COURT SUBPOENA

THE PLAINTIFF/PETITIONER in the above referenced case, does hereby respectfully request that this honorable body utilize the power of the court to issue a subpoena for RANDY STOKER, 5<sup>th</sup> District Court Judge, Jerome, Idaho, for the purpose of deposing and / or testifying with regard to, first hand factual knowledge and information concerning issues relevant to the court in this case. In particular, bringing forth all information, documentation, paperwork, and any and all other items, as required, pertaining but not limited to, his knowledge and information concerning withheld and / or missing evidence as it relates to the early stages of this case and / but not limited to, the Sworn Statement of former Jerome County Sheriff, Larry Gold referring to "manipulation of evidence", "behind the scene", that was discovered to be with-in the "packet" of information discovered on March 18, 2011, by Correctional Officer Mike E. Hiskett, which was a large envelope containing legal documentation, mail and other documents, belonging to inmate/offender Jaimi Dean Charboneau, #22091, housed at that time, at Idaho Correctional Institution-Orofino, (ICI-O).

MOTION REQUESTING ISSUANCE OF COURT SUBPOENA: - 1 -  
(Petition for Post-Conviction Relief)

Respectfully submitted this 15 day of December, 2011 by:

Thomas E. Bergstrom  
Thomas E. Bergstrom (Power of Attorney, for and on behalf of  
Plaintiff/Petitioner, Jaimi Dean Charboneau).

WHEREFORE, Plaintiff / Petitioner respectfully prays that  
this Honorable Court issue its Order granting Plaintiff /  
Petitioner's MOTION REQUESTING ISSUANCE OF COURT SUBPOENA.

DATED This 15 day of December, 2011.

By: Thomas E. Bergstrom  
Thomas E. Bergstrom  
(Power of Attorney, for and on behalf of Plaintiff/Petitioner,  
Jaimi Dean Charboneau).

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 15<sup>th</sup>  
Day of December, 2011.



Marla L. Kessel  
Notary Public for Idaho  
Commission expires: 11/3/15

MOTION REQUESTING ISSUANCE OF COURT SUBPOENA: - 2 -  
(Petition for Post-Conviction Relief).

CERTIFICATE OF SERVICE

I the undersigned, hereby certify that on the 15 day of \_\_\_\_\_, 2011, a true and correct copy of the foregoing MOTION REQUESTING ISSUANCE OF COURT SUBPOENA was mailed, postage paid, by U.S. mail/hand delivered to the following persons.

Michelle Emerson  
Clerk of the District Court  
233 West Main St.  
Jerome, Idaho 83338  
(hand delivered)

John Horgan  
Office of Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main St.  
Jerome, Idaho 83338  
(mailed)

Randy Stoker  
P.O. Box 126  
Twin Falls, Idaho 83303-0126  
(mailed)

Jaimi Dean Charboneau, Plaintiff/Petitioner  
#22091, Unit 11, A-15-B  
P.O. Box 14  
Boise, Idaho 83707  
(mailed)

By Thomas E. Bergstrom  
Thomas E. Bergstrom  
(Power of Attorney, for and on behalf of Plaintiff/Petitioner,  
Jaimi Dean Charboneau).

MOTION REQUESTING ISSUANCE OF COURT SUBPOENA: - 3 -  
(Petition for Post-Conviction Relief).

POWER OF ATTORNEY

STATE OF IDAHO )  
( SS:  
COUNTY OF CLEARWATER)

BE IT KNOWN BY ALL INDIVIDUALS BY THESE PRESENTS, that I, Jaimi Dean Charboneau, presently residing at: ICI-O, Hospital Dr. North, #23, in the City of Orofino, County of Clearwater, and the State of Idaho; do hereby make, constitute and appoint Becki Champion, and Tom Bergstrom, my true and lawful Attorney(s) in fact to act in my place and stead for the purposes of: Conducting all of my legal affairs concerning any Civil or Criminal matter which is either currently pending in a court of law or, any Civil or Criminal matter which might arise from a showing of cause and prejudice pursuant to the laws of this State and the Constitution of the United States of America.

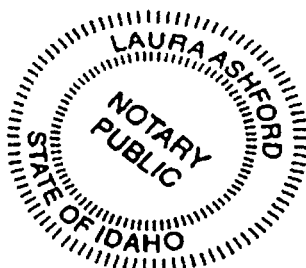
HEREBY granting and giving unto said persons the authorization, power and authority to do and perform any and all acts necessary or incident to the performance and execution of the power herein expressly granted, with the power to do and preform all acts authorized hereby, as fully and to intents and purposes as the grantor might or could do if personally present and personally acting, with full power of substitution.

Dated this 21, day of April, 2010.

Jaimi Dean Charboneau  
Jaimi Dean Charboneau  
Principal - Grantor

SUBSCRIBED and SWORN to before me this 21st, day of April, 2010

S  
E  
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[Signature]  
NOTARY PUBLIC FOR IDAHO

[Signature]  
Residing at:  
July 26 2011  
Commission Expires:

POWER OF ATTORNEY



Jaimi D. Charboneau, #22091  
ISCI - Unit 11, A-15-B  
P.O. Box 14  
Boise, Idaho 83707-0014

2011 DEC 15 PM 3:32

*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

Petitioner / In Propria Persona

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI D. CHARBONEAU, )  
Plaintiff/Petitioner, )  
)  
)  
-vs- )  
)  
)  
STATE OF IDAHO, )  
Respondent, )  
\_\_\_\_\_ )

CASE # CV2011-638  
**MOTION REQUESTING ISSUANCE  
OF COURT SUBPOENA**

THE PLAINTIFF/PETITIONER in the above referenced case, does hereby respectfully request that this honorable body utilize the power of the court to issue a subpoena for CORPORAL MIKE E. HISKETT, Idaho Department of Corrections Correctional Officer, Idaho Correctional Institute- Orofino, for the purpose of deposing and / or testifying with regard to, first hand factual knowledge and information concerning issues relevant to the court in this case. In particular, bringing forth all information, documentation, paperwork, and any and all other items, as required, pertaining but not limited to, his involvement with the discovery on March 18, 2011, in the form of a large envelope containing legal documentation, mail and other documents, belonging to inmate/offender Jaimi Dean Charboneau, #22091, housed at that time, at Idaho Correctional Institution- Orofino, (ICI-O).

Respectfully submitted this 15 day of December, 2011 by:

*Thomas E. Bergstrom*  
Thomas E. Bergstrom (Power of Attorney, for and on behalf of Plaintiff/Petitioner, Jaimi Dean Charboneau).

**MOTION REQUESTING ISSUANCE OF COURT SUBPOENA: - 1 -**  
(Petition for Post-Conviction Relief)

WHEREFORE, Plaintiff / Petitioner respectfully prays that this Honorable Court issue its Order granting Plaintiff / Petitioner's **MOTION REQUESTING ISSUANCE OF COURT SUBPOENA**.

DATED This 15 day of December, 2011.

  
Thomas E. Bergstrom

(Power of Attorney, for and on behalf of Plaintiff/Petitioner, Jaimi Dean Charboneau).

**SUBSCRIBED AND SWORN AND AFFIRMED** to before me this 15<sup>th</sup> Day of December, 2011.

(SEAL)





Notary Public for Idaho

Commission expires: 11/3/15

**MOTION REQUESTING ISSUANCE OF COURT SUBPOENA: - 2 -**  
(Petition for Post-Conviction Relief).

**CERTIFICATE OF SERVICE**

I the undersigned, hereby certify that on the 15 day of \_\_\_\_\_, 2011, a true and correct copy of the foregoing MOTION REQUESTING ISSUANCE OF COURT SUBPOENA was mailed, postage paid, by U.S. mail/hand delivered to the following persons.

Michelle Emerson  
Clerk of the District Court  
233 West Main St.  
Jerome, Idaho 83338  
(hand delivered)

John Horgan  
Office of Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main St.  
Jerome, Idaho 83338  
(mailed)

Corporal Mike E. Hiskett  
6778 Dent Bridge Road  
Orofino, Idaho 83544-6012  
(mailed)

Jaimi Dean Charboneau, Plaintiff/Petitioner  
#22091, Unit 11, A-15-B  
P.O. Box 14  
Boise, Idaho 83707  
(mailed)

By Thomas E. Bergstrom  
Thomas E. Bergstrom  
(Power of Attorney, for and on behalf of Plaintiff/Petitioner,  
Jaimi Dean Charboneau).

**MOTION REQUESTING ISSUANCE OF COURT SUBPOENA: - 3 -**  
(Petition for Post-Conviction Relief).



POWER OF ATTORNEY

STATE OF IDAHO )  
( SS:  
COUNTY OF CLEARWATER)

BE IT KNOWN BY ALL INDIVIDUALS BY THESE PRESENTS, that I, Jaimi Dean Charboneau, presently residing at: ICI-O, Hospital Dr. North, #23, in the City of Orofino, County of Clearwater, and the State of Idaho; do hereby make, constitute and appoint Becki Champion, and Tom Bergstrom, my true and lawful Attorney(s) in fact to act in my place and stead for the purposes of: Conducting all of my legal affairs concerning any Civil or Criminal matter which is either currently pending in a court of law or, any Civil or Criminal matter which might arise from a showing of cause and prejudice pursuant to the laws of this State and the Constitution of the United States of America.

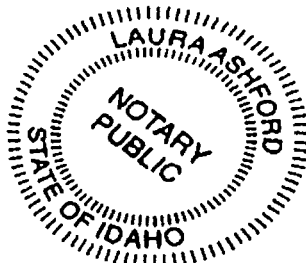
HEREBY granting and giving unto said persons the authorization, power and authority to do and perform any and all acts necessary or incident to the performance and execution of the power herein expressly granted, with the power to do and preform all acts authorized hereby, as fully and to intents and purposes as the grantor might or could do if personally present and personally acting, with full power of substitution.

Dated this 21, day of April, 2010.

Jaimi Dean Charboneau  
Jaimi Dean Charboneau  
Principal - Grantor

SUBSCRIBED and SWORN to before me this 21st, day of April, 2010

S  
E  
A  
L



[Signature]  
NOTARY PUBLIC FOR IDAHO

[Signature]  
Residing at:

July 26 2011  
Commission Expires:

POWER OF ATTORNEY

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

Affidavit of Fredrick R. Bennett

2011 DEC 15 PM 3 32

Date: December 14, 2011

RE: CASE # CV-2011-638

Michelle Emerson

I, Fredrick R. Bennett, respectfully request to be allowed to come and testify or give a statement regarding first hand factual knowledge of what Tira Arbaugh had confided in me as a friend and confidant, regarding her troubled conscience.

I knew both Jaimi Charboneau and Tira Arbaugh and, I am familiar with the shooting death of Marilyn Arbaugh and Jaimi Charboneau's conviction.

Tira said she wrote the Judge a letter which, she showed me before she mailed it. After that, being very busy with my life, I did not follow up or keep up with the case of Marilyn Arbaugh and Jaimi Charboneau, but assumed it had taken its natural course of events.

I have been a lifelong resident of the State of Idaho and currently reside in Hammett, Idaho.

I am of legal age (over 18 years) and competent to testify, should I be called upon to provide testimony for any legal proceeding.

I am with-in close proximity to Jerome County and I am willing to travel to Jerome County for the purpose of giving a statement or testifying in person, regarding first hand factual knowledge of what Tira Arbaugh had confided in me and what she did.

Lastly, I am in seriously poor health and would therefore, respectfully request that be allowed to give a statement or testify as soon as possible, as it is not known what the immediate future beholds.

Fredrick R. Bennett Date: 12/15/2011  
FREDRICK R. BENNETT

SUBSCRIBED and SWORN before me this 15 day of December, 2011.

WITNESSED BY: Thomas E. Bergstrom THOMAS E. BERGSTROM  
Charles Bergstrom CHARLES BERGSTROM  
Charles Bergstrom CHARLES BERGSTROM

(SEAL)

NOTARY PUBLIC – State of Idaho

Residing at: \_\_\_\_\_

Commission Ex: \_\_\_\_\_

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME  
233 WEST MAIN STREET  
JEROME, IDAHO 83338

JAIMI DEAN CHARBONEAU #22091, PLAINTIFF

Plaintiff,

vs

STATE OF IDAHO, DEFENDANT,

Defendant.

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2011 DEC 19 AM 9 37

*Michelle Emerson*  
CLERK

Case No: CV-2011-0000638

BY

DEPUTY CLERK

NOTICE OF HEARING

**NOTICE IS HEREBY GIVEN** that the above-entitled case is hereby set for:

Scheduling Conference  
Judge:  
Courtroom:

Friday, January 27, 2012 02:00 PM  
Robert Elgee  
Courtroom #2 - District Courtroom

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Monday, December 19, 2011.

Counsel:  
BRIAN M. TANNER  
137 GOODING ST. W  
TWIN FALLS ID 83301

Mailed ☒

Hand Delivered ☐

Counsel:  
MIKE SEIB  
233 W. MAIN ST.  
JEROME ID 83338

Mailed ☐

Hand Delivered ☒

Dated: Monday, December 19, 2011  
Michelle Emerson  
Clerk Of The District Court

By: 

Deputy Clerk

cc: Judge Elgee

NOTICE OF HEARING



BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2011 DEC 27 PM 4.19

BY Michelle Emerson  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs

STATE OF IDAHO.

Respondent.

Case No CR 11-638

**ORDER DISMISSING THE COURT'S  
INTENT TO DISMISS PURSUANT TO  
I.C. §19-4906**

THE COURT, having considered the Petitioner's Amended Petition for Post Conviction Relief and having considered the matter on the record, finds that the Petitioner has alleged sufficient facts in his Amended Petition with sufficient evidentiary support, to entitle him to an evidentiary hearing. *Subject to any state motion to dismiss.*

It is therefore the order of the Court, that the Court's prior Notice of Intent to Dismiss is hereby withdrawn by the Court's own motion. *JE*

DATED this 21 day of January, 2011

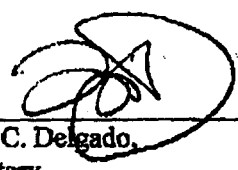
*Robert Egan*  
Honorable Judge

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 19th day of December, 2011, I caused a true and correct copy of the foregoing **ORDER DISMISSING THE COURT'S INTENT TO DISMISS PURSUANT TO L.C. §19-4906** to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734 - 2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 JAN 3 PM 4 42

BY  CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

EX-PARTE MOTION TO APPOINT TOM  
BERRY AS SPECIAL INVESTIGATOR AT  
COUNTY EXPENSE

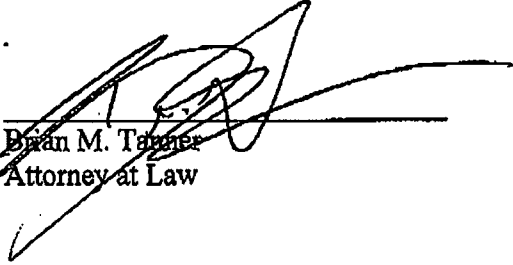
COMES NOW, the above named Petitioner, JAIME CHARBONEAU, by and through his attorney of record, Brian M. Tanner, and hereby requests this Court appoint Tom Berry as a special investigator to assist this office in obtaining documents and interviewing witnesses related to the Petitioner's application for post conviction relief.

Tom Berry is a retired sheriff from Boise city and Elmore County and has been assisting this office in obtaining information and coordinating correspondence from the Petitioner. The Petitioner requests that Tom Berry be assigned to assist him with his application for post conviction relief. Mr. Berry is the owner of "Special Investigations," which is incorporated in the state of Idaho. His address is P.O. Box 683, Mountain Home, Idaho 83647-0683.

MOTION TO APPOINT INVESTIGATOR 1

Wherefore, the Petitioner requests the Court grant his motion and appoint Tom Berry as a special, independent investigator at county expense.

DATED this 3<sup>rd</sup> day of January, 2011.



Brian M. Tanner  
Attorney at Law

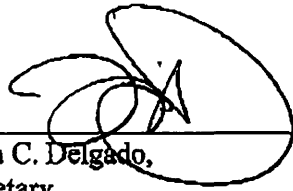
MOTION TO APPOINT INVESTIGATOR 2

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 3rd day of January, 2012, I caused a true and correct copy of the foregoing **EX-PARTE MOTION TO APPOINT TOM BERRY AS SPECIAL INVESTIGATOR AT COUNTY EXPENSE** to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary



JOHN L. HORGAN  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, ID 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB #3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 JAN 5 AM 11 53

*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                      |   |                      |
|----------------------|---|----------------------|
| JAIMI D. CHARBONEAU, | ) | Case No. CV-2011-638 |
|                      | ) |                      |
| Petitioner,          | ) | MOTION FOR SUMMARY   |
|                      | ) | DISPOSITION          |
| vs.                  | ) |                      |
|                      | ) |                      |
| STATE OF IDAHO       | ) |                      |
|                      | ) |                      |
| Respondent.          | ) |                      |

COMES NOW, the Respondent, the State of Idaho, by and through its attorney of record, MICHAEL J. SEIB, Deputy Prosecuting Attorney, Jerome County, Idaho, and, pursuant to Idaho Code § 19-4906, moves this Court for summary dismissal of Petitioner Jaimi D. Charboneau's Amended Petition for Post Conviction Relief. This motion is made on the grounds that the Petitioner has failed to establish a genuine issue of material fact, and accordingly, the Respondent is entitled to judgment as a matter of law.

The specific grounds for dismissal of each of the Petitioner's allegations are set forth in accompanying Brief in Support of Motion for Summary Dismissal.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of January 2012.

*[Signature]*  
\_\_\_\_\_  
Michael J. Seib  
Special Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 5 day of January 2012 I served a true and correct copy of the within and foregoing *Motion For Summary Dismissal* upon the person(s) named below by mail, hand delivery or facsimile:

Brian Tanner  
137 Gooding St. West  
Twin Falls, ID 83301

  
Jerome County Prosecutor's Office

JOHN L. HORGAN  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, ID 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB #3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2012 JAN 5 AM 11 53

*Middle Emerson*  
CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                      |   |                      |
|----------------------|---|----------------------|
| JAIMI D. CHARBONEAU, | ) | Case No. CV-2011-638 |
|                      | ) |                      |
| Petitioner,          | ) | BRIEF IN SUPPORT OF  |
|                      | ) | MOTION FOR SUMMARY   |
| vs.                  | ) | DISPOSITION          |
|                      | ) |                      |
| STATE OF IDAHO       | ) |                      |
|                      | ) |                      |
| Respondent.          | ) |                      |

### PROCEDURAL HISTORY<sup>1</sup>

Jaimi Dean Charboneau ("Charboneau") was convicted of first degree murder and was sentenced to death for the crime. Charboneau filed two separate petitions for post-conviction relief, both of which were denied by the trial court. Charboneau appealed his conviction, sentence and rulings on his two applications for post-conviction relief. The conviction and rulings on the post-conviction matters were affirmed, while the sentence was vacated and the case remanded for resentencing (*State v. Charboneau*, 116 Idaho 129, 774 P.2d 299 (1989)). On remand, the trial court sentenced Charboneau to a fixed life sentence without possibility of parole and Charboneau then appealed that sentenced.

<sup>1</sup> For a detailed description of facts and prior proceedings see: *State v. Charboneau*, 116 Idaho 129, 774 P.2d 299 (1989); *State v. Charboneau*, 124 Idaho 497, 861 P.2d 67 (1993).

The Supreme Court of Idaho affirmed the life sentence on October 22, 1993 (*State v. Charboneau*, 124 Idaho 497, 861 P.2d 67 (1993)).

In 2002, Charboneau filed a third petition for post-conviction relief on the basis of ineffective assistance of counsel and newly discovered evidence. This petition was summarily dismissed by the district court, which was ultimately vacated by the Idaho Supreme Court and remanded back for further proceedings. *Charboneau v. State*, 140 Idaho 789, 102 P.3d 1108 (2004). Upon remand, the district court once again summarily dismissed the petition and Charboneau once again appealed to the supreme court, which affirmed the district court's dismissal (*Charboneau v. State*, 144 Idaho 900, 174 P.3d 870 (2007)). Charboneau then filed a forth petition for post-conviction relief in 2008 that was also summarily dismissed by the district court, but not appealed. Charboneau now brings before this court his fifth petition for post-conviction relief.

#### APPLICABLE STANDARDS

A petition for post-conviction relief is brought pursuant to the Uniform Post-Conviction Procedure Act as set fourth in Idaho Code Sections 19-4901 through 19-4909. A petition filed pursuant to these sections initiates a special proceeding that is civil in nature and is an entirely new proceeding, distinct from the criminal action that led to Charboneau's conviction. *January v. State*, 127 Idaho 634, 903 P.2d 1331 (Ct. App. 1995). Summary dismissal of an application pursuant to Idaho Code Section 19-4906 is the procedural equivalent of summary judgement under Idaho Rules of Civil Procedure 56. *Medrano v. State*, 127 Idaho 639, 903 P.2d 1336 (Ct. App. 1995). Like a plaintiff in a civil action, the applicant must prove by a preponderance of the evidence the

allegations upon which the request for post-conviction relief is based. *Martinez v. State*, 126 Idaho 813, 892 P.2d 488 (Ct. App. 1995).

Summary dismissal is proper and an evidentiary hearing is not required if only unsubstantiated, and conclusory allegations are raised in a petition. *McKinney v. State*, 133 Idaho 695, 700, 992 P.2d 144, 149 (1999). To withstand summary dismissal in a post-conviction relief proceeding, it is incumbent upon the applicant to tender a factual showing based upon evidence that would be admissible at the hearing. *Drapeau v. State*, 103 Idaho 612, 651 P.2d 546 (Ct. App. 1982). To justify a post-conviction evidentiary hearing, the petitioner must make a factual showing based on admissible evidence. The application must be supported by written statements from competent witnesses or other verifiable information. *McKinney*, 133 Idaho at 700, 992 P.2d at 149. Hearsay is not admissible except as provided by the Idaho Rules of Evidence or other rules promulgated by the Idaho Supreme Court. I.R.E. 802; *Rowan v. Riley*, 139 Idaho 49, 54, 72 P.3d 889, 894 (2003). Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." I.R.E. 801; *Rowan*, 139 Idaho at 54, 72 P.3d at 894. Summary dismissal is proper and an evidentiary hearing is not required if only unsubstantiated, and conclusory allegations are raised in the petition. *McKinney*, 133 Idaho at 700, 992 P.2d at 149; *Nguyen v. State*, 126 Idaho 494, 497, 887 P.2d 39, 42 (Ct.App.1994). The supporting affidavits must contain verifiable information. *Nguyen*, 126 Idaho at 497, 887 P.2d at 42. Moreover, the facts alleged in the petition, even if true, must justify a grant of relief to the petitioner. *Stuart v. State*, 118 Idaho 932, 934, 801 P.2d 1283, 1285 (1990). An application for post-conviction relief must be verified with respect to facts within the

personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the petition. *Medrano*, at 642-43, 903 P.2d at 1339-40. In other words, the application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal. Id.

## ARGUMENT

Charboneau has initiated this proceeding by filing the latest in a long string of petitions for post-conviction relief – at least his fifth. Both the petition and the claims asserted therein lacks novelty; Charboneau supposedly having once again discovered “new” evidence, consisting of not merely one, but three conspiracies against him. However, nothing more than a mere glance at this latest petition shows it to raise nothing more than old, stale matters; albeit couched in new “packaging”. In other words, Charboneau does allege the three “newly-discovered” conspiracies, but they revolve around nothing more than issues that have already been brought by him; and that have already been resolved by the courts. Furthermore, the allegations of the conspiracies themselves are not even new, and are thus irrelevant, unsupported, or both.

## THE WATTS CONSPIRACY

One of the three conspiracies alleged by Charboneau involves former Jerome County Clerk, Cheryl Watts. Charboneau alleges that Ms. Watts attempted to conspire with a sheriff’s deputy to destroy a certain letter that was sent to the trial court. Before analyzing this claim, it should first be noted that Charboneau fails to support this allegation with admissible evidence. In support of it, he offers only a hearsay statement that is contained within a hearsay statement; that is contained in a hearsay statement. Given that none of

these statements, individually or considered as a whole, are admissible, none can serve as support for the Watts' conspiracy claim. *Medrano, supra*.

The chain of hearsay statements begins with Charboneau's Exhibit E, which is a handwritten note (herein after, the "Note") that Charboneau claims to be "by an unknown author<sup>[2]</sup> who alleges that he/she witnessed Cheryl Watts intercept a letter addressed to Judge Becker from Tira Arbaugh, dated September 7, 1989." (*Amended Petition For Post-Conviction Relief*, Exhibit E). In and of itself, there is nothing strange about the observed action of Ms. Watts as described in the Note, as a court clerk receiving mail addressed to the court and reading it so as to properly direct it is common place. The Note's author describes no other action taken, or words spoken, by Ms. Watts, and certainly no other actions or statements by her to show a nefarious intent on her part. Instead, the Note's author states that he/she merely advised Ms. Watts that the Exhibit G letter should not be shredded. As helpful as this advice truly is, there is nothing stated in the Note to show such advice was warranted, or that this is what Ms. Watts was intending on doing with the letter. It is as if the author of the Note simply pulled the subject of shredding from thin air and asserted it totally out of context.

Nevertheless, the Note's author states he/she "later discussed this matter [presumably his observations and discussions with Ms. Watts] with Chief Deputy Mito Alanzo..." (*Amended Petition For Post-Conviction Relief*, Exhibit E). Charboneau offers no statements by Deputy Alanzo, so from this point one has to jump to, and rely on, the statements allegedly made by Larry Gold that are contained within Charboneau's Exhibit C. In this exhibit, Mr. Gold states that Deputy Alanzo passed on to him the statements

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<sup>2</sup> The author of Exhibit E is not unknown, but rather whose identity was discovered by Charboneau's own investigator to be former Jerome County Deputy Orville Balzer.

that the unknown author of the Note had made to Deputy Alanzo and that concerned Ms. Watts. So in other words, the chain of hearsay statements concerning Ms. Watts starts with the person who wrote the Note, and then to Deputy Alanzo, and then to Mr. Gold. It is from this chain that Mr. Gold states he became aware of the Watts conspiracy. (*Id.*, Exhibit C, pp. 1 and 2, ¶ 6)

The confusion caused in simply trying to understand this chain of communication should in and of itself be sufficient to show the statements unreliable and incapable of supporting any kind of claim made by Charboneau. Nevertheless, in analyzing the various statements, it should first be noted that Exhibit C is characterized by Charboneau as “a sworn statement of former Jerome County Sheriff Larry Gold” (*Amended Petition For Post-Conviction Relief*, p. 3; emphasis added). Although Exhibit C is entitled, “Sworn Statement of Former Jerome County Sheriff Larry Gold,” it is conspicuously missing any type of notary signature or other form of certification so as to actually be a “sworn” statement. It does not appear that the notary or certification page is simply missing either, as there is about a third of unused paper below Mr. Gold’s signature where the notary typically signs, and that is more than enough room for such notary language to be placed.

In any event, Mr. Gold does state in Exhibit C that his chief deputy, Mito Alanzo, confided to him the concerns Deputy Alanzo had about what had been told to him by the unknown author of the Note. (Exhibit C, ¶ 6). It is from Mr. Gold’s hearsay statements concerning the hearsay statements of Mr. Alanzo, concerning the hearsay statements of the unknown author of the Note, that Charboneau establish his conspiratorial claim



against Ms. Watts. Clearly, it would be absurd to allow him to bring a post-conviction claim supported by nothing more than such a multiple chain of hearsay statements.

Beyond being hearsay, the statements of Mr. Gold in Exhibit C are all the more peculiar given they completely contradict what he said in his letter to Charboneau just four month earlier. In Charboneau's Exhibit D, Mr. Gold allegedly wrote Charboneau a letter back in June of 2001, and stated:

The most disgusting issues were the *apparent* acts of a few people that "*appeared to conspire*" to punish a person far beyond the limits of the law... There also *appeared* to be a "collaboration of minds"... remember that *this is just a personal hypothesis now. I have no proof of this in your case*, just a deep down feeling that I am right..."

(*Amended Petition For Post-Conviction Relief*, Exhibit D, pp. 1 and 2; emphasis added).

Just four months after writing this letter, Mr. Gold then supposedly writes out the Exhibit C document and states:

4. That as I stated in my June 3<sup>rd</sup> 2001 letter to Mr. Charboneau, *I am aware* of certain improprieties committed by the Jerome County prosecutor's office and the special prosecutor from the Idaho Attorney General's office (Marc Haws) in preparing various cases for trial, *and specifically* Mr. Charboneau's case.
5. That it is my belief that contrary to my efforts and mandates, certain court and county officers often manipulated or affected the facts and evidence of cases to arrange for a finding of guilt.

(*Id.*, Exhibit C, ¶¶ 4 and 5; emphasis added).

In comparing Mr. Gold's two statements, it is first noted that Mr. Gold claims in his November letter that several of the issues he brings up there were the same issues he stated in his June letter. This is clearly not true. In June, Mr. Gold states the opposite of his November claims; stating in June that he was of aware of no facts and had only "hunches". Yet, in November, he now somehow has knowledge of not only the specifics

regarding Ms. Watts, but multiple wrong doings that supposedly took place in Charboneau's case.

Furthermore, Mr. Gold's November claims are extraordinary in that he states that the numerous improprieties that he was always aware of (except for apparently when he wrote his June 3<sup>rd</sup> letter) were not limited to only Ms. Watts, but actually extended to other court personnel and the prosecutor's office too. And even more extraordinary still are Mr. Gold's claims that these two offices and the several county personnel within them "often manipulated or affected the facts and evidence of cases to arrange for a finding of guilt." (*Id.*, Exhibit C, ¶ 5). In fact, this claim is so remarkable that it should be stated again so that it is clearly understood what Mr. Gold is accusing the various Jerome County employees of doing. His accusations are that numerous individuals, to include court personnel, county officers (elected officials) and the prosecutor's office, routinely and often violated the law (for no stated reason) by tampering with the evidence in various cases so that a finding of guilt could be secured. *Id.* This astonishing claim is the biggest conspiracy discussed in these proceeding thus far (but surprisingly, not one focused on by Charboneau); yet somehow it had completely lapsed from Mr. Gold's memory only four months earlier when he wrote in his June letter that he had no knowledge of any improprieties regarding Charboneau's case – only feelings.

Also noteworthy is the fact that Mr. Gold states this illegal conduct by this ring of co-conspiring, county thugs occurred despite his "efforts and mandates" to stop it. *Id.* Although Mr. Gold does not identify what his "efforts and mandates" consisted of in attempting to stop the illegal activity, it is surprising that such were insufficient in doing so given that he was after all, the sheriff of the county in which the illegal activity was

occurring. To stop it, and prevent it from occurring again, it would seem that all Mr. Gold needed to do was simply arrest the wrong doers. The record of Jerome County does not show any such arrests or subsequent prosecutions of county employees, so whatever Mr. Gold's "efforts and mandates" consisted of, it must have not been this. Nevertheless, whatever the "efforts and mandates" were, surely they were written reprimands, notification letters or request for assistance or advice, or other like documents capable of establishing some kind of record capable of corroborating Mr. Gold's claims and in turn, Charboneau's. Surely, this record is obtainable and something Charboneau will be submitting here shortly.

In the meantime, the point established here is that these contradictions between the June and November letters, and Mr. Gold's apparent inability to stop criminal behavior despite being the local sheriff, are clearly absurd outcomes of what Charboneau is attempting to purport here. The absurdity however does not stop with the statements of Mr. Gold, but continues on with those being claimed in regard to Ms. Watts.

The allegation that Ms. Watts sought out either the assistance of Deputy Alanzo (as stated by Mr. Gold in Exhibit C), or that of the unknown author of the Note (as alluded to in the chain of hearsay statements described above), to destroy court documents seems highly unlikely. This is because unless the letter was made of some kind of industrial strength titanium steel, it does not seem Ms. Watts would risk seeking out the help of anyone for a task that she could so easily do herself. By soliciting such assistance, Ms. Watts risked that the solicitee would reject her request and instead (much like is alleged to have occurred), report the unlawful request to proper authorities. Therefore, if anything was said at all by Ms. Watts, it most likely was not as is alleged

here. This is because, in addition to the above, the simple fact remains that the Exhibit G letter was not destroyed. Quite to contrary, it survived all these years until somehow being placed into Charboneau's waiting hands and presented here.

Charboneau does not explain how the letter went from its near-destruction at the hands of Ms. Watts to nearly 25 years of actual preservation. More odd still is the fact that after all the allegations of the letters attempted destruction – or at the very least, after all the alleged conspiracies to destroy or intercept Charboneau's mail and prevent him from seeing such things as the letter – it nonetheless still ends up at the penitentiary, inside a "mysterious" envelope that apparently just sits around all these years until the day it is finally discovered and given to Charboneau. Whatever the case may be, the point here is that there is a reason the hearsay rule exists; a reason why documents must be authenticated; and a reason why claims for post-conviction relief must be supported by admissible evidence. If it were otherwise, then petitioners like Charboneau could simply "come-up" with documents such as the Note, Mr. Gold's statement, and/or the Exhibit G letter, and have them applied to their cause at face value.

Fortunately for all however (well, except maybe for Charboneau), some evidence is provided as to the Note's authenticity; and understanding as to its origin. Tom Berry, a private investigator hired on Charboneau's own behalf states in his sworn affidavit:

I next examined... a hand written page signed by former Jerome County Deputy Orville Balzer. I made contact with Mr. Balzer at his residence near Fruitland. I showed him the document and asked him what he could tell me about it. Mr. Balzer looked and [sic] the document and advised me that it was a forgery in that the signature was his, but the rest of the document was written by an unknown person. I examined Balzer's handwriting on his original police report, as well as other samples of his handwriting he showed me at his home. The handwriting was such a contrast that it clearly had not been written by Mr. Balzer and is a forgery. That item is labeled EXHIBIT 9.

(*Affidavit of Tom Berry*, signed October 24, 2011, p. 4, ¶ 9; submitted with the *Response To Notice Of Court's Intent To Dismiss Pursuant To I.C. § 19-4906 And Request For Evidentiary Hearing*).

Mr. Berry's Exhibit 9 is the Note that Charboneau labels as Exhibit E in his amended petition. Obviously, under the light shined by Mr. Berry, the long, drawn out analyses from above, and rhetorical questions raised by them, were not entirely necessary. This is because of instead of going through such analyses and raising the many questions therefrom, one could have simply cited to Mr. Berry's affidavit and merely pointed out the Note was a fraud. However, the above analysis does serve the purpose of illustrating the interplay between the Note and Mr. Gold's statements, and makes it plainly clear that if the Note is a fraud, then so too would be Mr. Gold's statements. That is, if Deputy Blazer was never asked by Ms. Watts to destroy the letter, then Mr. Gold could never have heard about such non-existent acts to put in his statement. This makes it extremely likely that Mr. Gold's statements are fraudulent as well.

Another reason for analyzing the absurdity of the purported conspiracy against Ms. Watts and Mr. Gold – to only then reveal such analyses weren't necessary because of the known forgery – is because of the pure absurdity that the analyses shows. If similar absurdity is raised when the other alleged conspiracies fronted by Charboneau are dissected, then chances are extremely high that those conspiracies are based on fake documents as well.

#### THE MAIL INTERFERENCE CONSPIRACY

Another conspiracy that Charboneau also just happens to have stumbled across involves certain individuals illegally seizing and confiscating his mail while he was in prison. First of all, what is not explained by Charboneau in regard to this conspiracy is

how the conspiratorial act(s) of preventing Charboneau from receiving his prison mail serves as a legitimate bases for post-conviction relief; especially when such acts of “mail interference” are said to have occurred after the conviction and sentence, and which by their very nature, couldn’t have occurred any earlier, or at least until Charboneau was actually in prison. Exhibits A and B that Charboneau he himself provides with his amended petition show the alleged mail interference to not have occurred until around 2003 and 2004 – well over a decade since he had been convicted and resentenced. Charboneau does not necessarily dispute this, saying only that, “It is unknown when this conspiracy began.” (*Response To Notice Of Court’s Intent To Dismiss Pursuant To I.C. § 19-4906 And Request For Evidentiary Hearing*, filed October 25, 2011, p.5). Although this is a fair enough statement, they are nevertheless statements on their face that suggest the Mail Interference Conspiracies had only recently started as of June, 2003, and Charboneau offers nothing to show otherwise. Therefore, even if such a conspiracy were assumed true, the act(s) that constituted it, of and by themselves, would have absolutely no bearing on Chaboneau’s underlying conviction and/or resentence as those two things were over and done with long before any such conspiratorial acts were engaged in.

This is not to say that there isn’t any recourse for Charboneau having his mail confiscated while in prison, as there very well might be if his allegations are in fact true (most likely a writ of habeas corpus that concerns a condition of confinement pursuant to Idaho Code Section 19-4203). The only thing being stated here is that relief for any such potential wrong doings cannot be obtained via a post-conviction proceeding and Idaho Code Section 19-4901, as these are limited to claims concerning ones conviction and/or

sentence. Nowhere does 19-4901 state it provides relief for a condition of confinement, which is what this conspiracy claim amounts to.

Beyond this fact, Charboneau's Mail Interference Conspiracy is also not a new claim or theory of Charboneau's. Exhibit N of his original petition (attached for convenience purposes) contains a statement by Charboneau himself that shows he believed as early as 2005 that Marc Haws was interfering with his prison mail. Therefore, even if it were possible for Charboneau to make this claim into a post-conviction issue, he would be outside the "reasonable amount of time" period to bring the claim.

Ironically enough, a thorough analysis of what constitutes a reasonable amount of time to bring a petition for post-conviction relief was had in *Charboneau v. State, supra*, 144 Idaho at 904, 174 P.3d 874. There, Charboneau's third petition for post-conviction relief (filed in 2002) was being addressed by the Supreme Court. Specifically at issue was a determination as to what constituted a reasonable amount of time to bring successive petitions. *Id.* One of Charboneau's 2002 allegations concerned evidence of a second, hidden and undisclosed gun. In addressing the claim, the court found that there was evidence that showed he was fully aware of the "hidden gun" evidence thirteen months before bringing a petition for post-conviction relief; and evidence that he likely knew of the hidden-gun evidence even two years before that thirteen month time period. *Id.*, at 905, 174 P.3d 875. In any event, the court concluded that filing a post-conviction petition even thirteen months after becoming aware of the undisclosed evidence of an additional gun was simply too long a period of time to be reasonable. *Id.* Clearly, if thirteen months is beyond a reasonable amount of time to bring a claim, then the six years that have

passed since Charboneau first suspected and noted the interference of his mail is way beyond any standard of reasonability.

In response to this, Charboneau will contend that he did not have sufficient evidence back in 2005 to bring his mail interference claim and therefore the reasonable time in which his petition must be filed should be measured from the point when he had accumulated sufficient evidence to support his petition. This most assuredly will be Charboneau's response given that this is what he tried in response to the court's above finding in regard to the second gun claim. There, Charboneau asserted that he did not have sufficient evidence to support his claim until after receipt of a certain letter. The court retorted that the appropriate standard to be applied to the issue of timeliness was to start measuring time from the date of *notice* of the claim, not from the date a petitioner assembles a complete cache of evidence. *Id.*, at 905, 174 P.3d 875. Under this standard, the court accordingly affirmed the decision to dismiss Charboneau's 2002 petition.

Such should be the result here (again, this is assuming that this conspiracy claim is even appropriate for post-conviction relief). Regardless of what actual evidence Charboneau may have had that Mr. Haw's had been interfering with his mail, the point is that he at the very least suspected it and was attempting to gather evidence to support it back in 2005 (as established by Exhibit N, attached). Based on the standards set forth in his prior cases, it is not reasonable to consider this most recent petition timely when it was not filed until six years after Charboneau first became aware of the issue.

Making even more egregious Charboneau's gall to file at this time his "six year after discovery" claim is the fact that he filed his fourth petition for post-conviction relief in 2008. (District Court Case Number CV-2008-1342). That petition was close to thirty



pages long; yet apparently there was no room to mention the mail interference claim that he had suspected or known about for three years at that time. If it is assumed that the mail interference claim can be brought pursuant to a petition for post-conviction relief; and if it is assumed that three years after discovery (2005 to 2008) is a reasonable amount of time, then Charboneau could have, and should have, included this claim in his 2008 petition.

Another point to consider (again, only after first assuming Charboneau's allegation of the Mail Interference Conspiracy was a proper matter for post-conviction in the first place) is that no admissible evidence has been offered to support the Mail Interference Conspiracy claim. *Medrano, supra*, 127 Idaho at 642-43, 903 P.2d at 1339-40. Charboneau contends that Exhibits A, B and C are "admissible evidence as they are admissions against interest under I.R.E. 804(b)(3)." (*Response To Notice Of Court's Intent To Dismiss Pursuant To I.C. § 19-4906 And Request For Evidentiary Hearing*, p.3). Although the cited rule might qualify the statements as exceptions to the hearsay rule, it does not by itself make them admissible evidence. That is to say, the hearsay rule is but one requirement to admissibility. Another requirement for example, is authenticity per Idaho Rules of Evidence 901, 902 and 903. The three exhibits identified above (A, B and C) are clearly not self-authenticating per 902, and Charboneau offers nothing else to show that they were authentically written by their purported authors. Given this, Charboneau cannot even claim these exhibits contain declarations against interest because it is not known whose declarations they in fact are.

Charboneau completely overlooks any question of authenticity, apparently attempting to convince himself and all others that these exhibits were in fact written by

the certain individuals named therein, simply because their names appear (in type) in the documents. Exhibits “A” and “B” do not contain any “unique” quality of personalization, such as handwriting or a signature that might link the documents to a particular individual. Because they are completely typed, both the statements and the names contained therein could have been easily produced on a typewriter or word processor by anyone with a motive to commit such a forgery (from the nature of the original petition, it is clear that inmates such as Charboneau have access to word processors). As far as it, even hand written letters like Exhibit C can be forged as illustrated above in regard to the Exhibit E Note.

In any event, even from a layman’s perspective the authenticity of the Exhibit A and B emails appear concerning. For example, and purely as an observation, the “writing-style” of Mr. William Unger, as shown in Exhibit A, seems peculiar in the way he continually invokes the name of the person he is writing. This is observed as follows:

*Dewayne*, I have reviewed this letter you gave me last week... *Dewayne*, I’m not sure that we should be getting involved in this thing... I don’t know the connection between this Larry Gold and Charboneau *Dewayne*, but... I’m game for anything to help the Federal Prosecutor but let’s be careful *Dewayne*... *Dewayne*, when you speak to Haws...

*(Amended Petition For Post-Conviction Relief, Exhibit A, p. 1; emphasis added)*

*Shedd* [*Dewayne*’s last name], I agree these documents from Larry Gold... *Dewayne*, don’t forget to do like Haws suggested ...

*(Id., p. 2; emphasis added)*. This style of writing, where the name of the recipient is continually stated in the message, seems peculiar simply on its face, but becomes even more so after realizing that Charboneau himself, a person who may have the above motive, has the same writing style. This is seen in Exhibit M of the amended petition, which shows a letter written by Charboneau to a Mr. Greg Silvey. It states:

The fact that these emails were printed out is even more puzzling given that Mr. Dewayne allegedly states that he will delete all incriminating emails. He specifically states, “LT. Unger, have notified Marc Haws about the documents founding [sic] offender Charboneau’s mail. *I will also shred and delete all old messages.*” (*Amended Petition For Post-Conviction Relief*, Exhibit A, p. 2; emphasis added). So what does the fact that the discovered hardcopies weren’t destroyed say about Mr. Dwayne’s own plan of action to shred and delete? That he disagreed with it and did not only want to disobey himself in regard to deleting emails, but also wanted to print out the hardcopies so that he could defy himself in regard to shredding paper documents as well?

Simply looking at common, everyday settings or situations, there rarely is a time when anyone of us prints an emailed message. At best we may save it to a certain electronic folder, or simply save it by not deleting it; but rarely is it ever printed. Clearly, this is not to say it doesn’t happen as it certainly does. But it does seem highly illogical under the circumstances being perpetuated by Charboneau (essentially that the mysterious envelope containing the confiscated mail was discovered by happenstance and conveniently located in it were printed copies of the incriminating emails that explained exactly what the envelope was).

Regardless of how the above questions might be answered, the point remains that analysis of Charboneau’s unsupported claim of the Mail Interference Conspiracy leads to nothing but the same absurdities illustrated before. Given that such absurdity may be an indicator of fraudulent documents – as shown in the analysis of the alleged Watts Conspiracy – the absurdity raised here should cause a fair amount of concern, causing the need for this conspiracy claim to be viewed with a skeptical eye. Further, the absurdity

Dear *Greg*... *Greg*, I never stated that I actually shot... Again, *Greg*, Marilyn was alive and speaking to me... *Greg*, I am concerned about the fact that... *Greg*, the only gun that I admitted to having... *Greg*, with all the new information that... Thanks *Greg*. Sincerely...

(*Id.*, Exhibit M; emphasis added). As indicated, the above is merely an observation (but nevertheless, an important one given the known forgery of the Exhibit E Note).

Moreover, the nature of the documents offered to support the Mail Interference Conspiracy do not fit the theory that Charboneau is attempting to perpetuate, which is essentially that certain prison personnel were cleaning out an office/cabinet and stumbled onto the packet of intercepted mail, which just happened to conveniently contain the printed emails that could serve as a kind of guide or blue-print of the alleged conspiracy, so that it would be abundantly clear what the package was and who was responsible for the sinister acts. Really? This doesn't make any sense. Why would the purported authors of the emails print them out when such hardcopies would serve no basis other than to increase the amount of incriminating evidence in existence, and in turn increase the chances of someone discovering their improper acts? Obviously, it's possible that it was someone other than the purported authors that printed the emails, but this would presumably mean it was someone who had access to the purported authors' computers. If this were the case, why does such a person simply print out the emails, only to stick them into an envelope and allow fate to determine when and if such will eventually be discovered. An investigator looking into the Mail Interference Conspiracy may be someone other than the purported authors who was interested in printing the emails out, but it would seem an investigator would take some kind of immediate action; not simply store such away in the envelope.

illustrated here should absolutely show why the law mandates claims such as this to be supported by admissible evidence.

Charboneau obviously disagrees with the need to support his petition with such admissible evidence, opting instead to argue that his unsubstantiated claims warrant a taxpayer funded investigation via the post-conviction and legal discovery processes (to include depositions, interrogatories, appointment of experts and private investigators, etc.). Charboneau argues such an investigation is permitted because of the mere fact that this “case presents, *at this stage*, one of the rare circumstances where the defects in the [legal] process were fundamental and a post-conviction evidentiary process is required to *discern and resolve* very disturbing and *genuine issues* of fact which, *if true*, demand relief.” (*Response To Notice Of Court’s Intent To Dismiss Pursuant To I.C. § 19-4906 And Request For Evidentiary Hearing*, p. 17; emphasis added).

It is clear from this that Charboneau himself has reservations about the validity of his Mail Interference Conspiracy allegations, but nevertheless believes he is entitled to proceed on the issues, at taxpayer expense, to find out. Charboneau may have this belief because of the way he characterizes the issues, improperly referring to them in the above quote as “*genuine issues of fact*”. As shown, they are anything but *genuine issues*; and instead, nothing more than bare, unsupported and conclusory allegations that deserve no further consideration and warrant nothing less than dismissal.

#### THE ARBAUGH CONSPIRACY

The final conspiracy alleged by Charboneau primarily involves a letter identified by him as Exhibit G in his amended petition, which he claims shows an effort on the part of the letter’s author, Ms. Tira Arbaugh, “in conjunction with law enforcement agents and

prosecutors to falsely fabricate and conceal relevant material facts and evidence from Petitioner and the Court as outlined above.” (*Amended Petition For Post-Conviction Relief*, p. 7, ¶ 15). Charboneau claims that if he would have known about the confiscated Exhibit G letter, he would have had an advantage when pursuing his previous petitions for post-conviction relief. (*Amended Petition For Post-Conviction Relief*, p. 7, ¶ 16).

However, Charboneau fails to explain how this is so; especially given that he was previously aware of not only the Exhibit G statements of Ms. Arbaugh, but actually even more damning statements that were raised in prior petitions for post-conviction relief. Evidence of this is found in the dissenting opinion in *Charboneau, supra*, 140 Idaho at 794-95, 102 P. 3d 1114-15, where the Honorable Justice Kidwell, after first analyzing the applicable law and noting hearsay was not capable of supporting a petition for post-conviction relief, stated:

In dismissing the petition, the district court determined Charboneau's “new evidence” is neither new nor admissible evidence... Charboneau supports his petition with a number of affidavits. However, the relevant parts of the affidavits that contain potentially exculpatory evidence that might justify a grant of relief by this Court are inadmissible as hearsay. For example, Crabtree attests that “*Tira [the deceased's daughter and wife of Charboneau's brother] told me that the tragedy which took the life of her mother on July 1st, 1984, did not happen the way it was played out in court ... [and the prosecutors] did instruct her on what they wanted her to say regarding the events which took place on July 1st.*” This information is inadmissible because Crabtree testified, “tragically, Tira passed away recently due to a severe asthma attack before she had a chance to testify.” Generally, statements made by a person who later from becomes deceased are inadmissible unless they are declarations made in the belief of impending death... Additionally, without more, such as a sworn statement from Tira Arbaugh, the allegations are unsubstantiated, unverifiable and conclusory. These statements are insufficient to support a petition for post-conviction relief.

*Id.*; (emphasis added).

Further, after the district court received the matter back upon remand, it addressed the “Tira Arbaugh” statements, and held:

The petitioner [Charboneau] attempts to offer as admissible evidence statements attributed to Tira Arbaugh that (a) she and Tiffany were instructed by the prosecutors as to what to say and to not disclose evidence that may be favorable to the defense and (b) that Tiffinie had made statements to her admitting to the killing of her mother. According to Betsy Crabtree (petitioner’s mother) Tira is deceased. Irrespective as to whether these statements may or may not be “newly discovered,” they are inadmissible hearsay statements.

*Opinion Dismissing Third Petition For Post Conviction Relief*, CV-2002-1546, filed July 12, 2005. From the manner that both Justice Kidwell and the district court describe the statements of Tira Arbaugh, it is clear that the subject matter of her statements that were offered in Charboneau’s third petition for post-conviction relief are of the same nature as found here in his fifth petition.

Perhaps the best evidence however to show that Charboneau has previously known about and raised the same claims regarding Ms. Arbaugh’s statement is his prior petition itself (filed in 2002) and the documents submitted to support it. In an affidavit submitted to support a 2002 petition, the following statements by Ms. Arbaugh were alleged by Charboneau:

- 7) That Tira Arbaugh Griggs did personally confess to me... that the tragedy which took the life of her mother on July 1st, 1984 did **not** happen the way it was played out in court. And;
- 8) That Tira also told me that Dan Adamson the first prosecutor to handle the case and, Mark [sic] Haws the trial prosecutor and, Jerome county sheriff’s deputy Larry Webb, did instruct her on what they wanted her to say regarding the events which took place on July 1st, 1984 in regards to the shooting incident at the EL-Rancho 93 outside of Jerome... And;
- 9) That Tira did inform me that Mark [sic] Haws and an investigator named Gary carr [sic] who was working with law enforcement during

the investigation regarding the death of Marilyn Arbaugh, had instructed her not to reveal certain facts about things which were found at the scene of the shooting on July 1st, 1984. Tira told me about two things which she said she was instructed to remain silent about they were her mother's holster and, her mother's guns. Tira told me that she had been instructed to say that the only gun that she could remember seeing that day was the rifle...

*(Affidavit of Betsy Charboneau Crabtree, dated May 6, 2002, ¶¶ 7 – 9; attached to Motion For Post Conviction Relief (Rule 57), filed May 23, 2002; emphasis in original) (attached for convenience purposes).*

Despite having previously raised the “Tira Arbaugh” claim back in 2002, Charboneau now runs back to this court, breathlessly waiving the same statements of Ms. Arbaugh (albeit not Ms. Charboneau Crabtree’s affidavit, but the Exhibit G letter), claiming such to be “newly discovered”. These “new” statements of Ms. Arbaugh are characterized by Charboneau as follows:

She [Tira Arbaugh] represents that she woke up at a certain time as instructed, but did not know if it was correct.

She [Tira Arbaugh] represents that Jaimi (Petitioner) had contact with her before any shooting. She represents that her sister, Tiff, grabbed the new .22 rifle.

She [Tira Arbaugh] also represents that Tiff told her that “mom had taken Calamity Jane [”].

She [Tira Arbaugh] represents that Tiff shot the new .22 rifle.

Officer Driesal told her [Tira Arbaugh] these things were not important to put in her statement.

She [Tira Arbaugh] represents that Officer Webb told her to put in a second statement that she heard six to eight shots more while back in the house – this was false.

She [Tira Arbaugh] represents that Marc Haws told her and the other family members to “get rid” of Calamity Jane, which they did.



Finally, she [Tira Arbaugh] reveals that she talked to Pinto Bennett about the untruthfulness of the case brought against Petitioner and he advised her to write Judge Becker.

*(Response To Notice Of Court's Intent To Dismiss Pursuant To I.C. § 19-4906 And Request For Evidentiary Hearing, pp. 7 and 8).*

When comparing Ms. Arbaugh's claimed 2002 statements to her present ones, the first thing noticed is that between the two sets of alleged statements, the ones from 2002 seem far more significant and important to Charboneau's case then do those of the Exhibit G letter. This is because the 2002 statements specifically refer to several illegal acts, such as suborning perjury and falsifying reports; where the Exhibit G statements refer only to a single instance of falsifying a report, which was included in the 2002 claims. Thus, the point being that the courts have already heard, settled, and dismissed the more serious alleged statements of Ms. Arbaugh. If these more serious statements were incapable of gaining judicial traction, there should be no reason for the less serious statements of Exhibit G to do so now.

The statement that refers to Officer Webb and Marc Haws, as well as the one concerning Officer Driesal (found in Exhibit G), where statements clearly raised in both 2002 and here again in this most recent petition. Although Officer Driesal was not specifically mentioned in 2002, the nature of the current statement that mentions him was. In 2002, it was claimed that law enforcement instructed Ms. Arbaugh to essentially falsify reports or to not mention certain things that had occurred. The only thing different now is that the alleged law enforcement personnel responsible for such actions is now named as Officer Driesal.

Therefore, the subject matter of the purported statements of Ms. Arbaugh has clearly been raised by Charboneau in prior petitions for post-conviction relief. While it is

true that the “packaging” of the similar claims is different (the 2002 statements being packaged in Ms. Charboneau Crabtree’s affidavit, the current ones in the Exhibit G letter), this is a distinction without effect. The relevant point remains that Ms. Arbaugh’s statements are not “newly-discovered”.

As far as it goes, the issue of whether these statements were “newly-discovered” was taken up by the district court when addressing Charboneau’s third petition, which noted then:

[I]t is unlikely that such statements [Ms. Arbough’s] would be unknown to the defendant at the time of his trial, or at sentencing or at his prior post conviction relief hearings. This is because Betsy Crabtree asserts that such statements were made to her by Tira at the trial and sentencing and this Court is of the belief that it is highly unlikely that if in fact such statements were made that she herself would have withheld such information from her son or his attorney. The Court notes that Ms. Crabtree testified at the petitioner’s sentencing hearing and made no such disclosures at that time.

*Id.* Obviously, this reasoning of the district court would apply here if this court is so inclined to engage in a “reasonable-times” analysis as to the Exhibit G statements. Although in truth, no such analysis is warranted or should be given since it is blatantly clear that the Exhibit G statements were already raised in Charboneau’s third petition and should simply be disposed of for that reason.

Beyond this, Charboneau was clearly told by the above courts that Ms. Arbaugh’s statements were hearsay and could not support a petition for post-conviction relief. Charboneau now runs to this court, excitedly waiving Exhibit H, but never stopping to consider and realize that it too is nothing more than inadmissible hearsay statements, incapable of supporting his fifth petition for post-conviction relief. This is plainly the

case for all the reasons stated by the district court, Justice Kidwell, and all the cases cited by him in his dissenting opinion (See the *Applicable Standards* section above).

If it still can be seriously argued that there are in fact “new” revelations in the Exhibit G letter that were not contained in Ms. Charboneau Crabtree’s 2002 affidavit, then at the very least such would only apply to the first four statements from the letter, as well as to the last one that regards a Pinto Bennett. These five statements are cited above as:

She [Tira Arbaugh] represents that she woke up at a certain time as instructed, but did not know if it was correct.

She [Tira Arbaugh] represents that Jaimi (Petitioner) had contact with her before any shooting. She represents that her sister, Tiff, grabbed the new .22 rifle.

She [Tira Arbaugh] also represents that Tiff told her that “mom had taken Calamity Jane [”].

She [Tira Arbaugh] represents that Tiff shot the new .22 rifle.

Finally, she [Tira Arbaugh] reveals that she talked to Pinto Bennett about the untruthfulness of the case brought against Petitioner and he advised her to write Judge Becker.

*(Response To Notice Of Court's Intent To Dismiss Pursuant To I.C. § 19-4906 And Request For Evidentiary Hearing, pp. 7 and 8).*

Of these statements, Charboneau never explains the significance that the “new” subject matters of these statements has to his case. For example, how does the time of day that Ms. Arbaugh woke-up on the day of the shooting affect Charboneau’s case, as it does not appear to be a significant factor on its face. The same thing can be said about the fact that Ms. Arbaugh had contact with Charboneau prior to the shooting; that Tiff made a statement to Ms. Arbaugh about their mother having taken a certain rifle; and that Tiff shot her rifle.

Charboneau will clearly claim otherwise; arguing for example, that Ms. Arbaugh's statement that Tiff told her that their mother had taken Calamity Jane is significant because it supports his "second gun" theory. However, this "support" is a hearsay statement within an unauthenticated hearsay statement – clearly inadmissible and not capable of supporting this "second-gun" claim, which is an old, repetitive claim at that.

He may then argue the significance of the other statements, stating that it isn't so much what time of the day it was that Ms. Arbaugh actually woke-up that is significant, but rather in that the statement shows that law enforcement was causing reports to be falsified. However, as discussed above, this is a claim that has been previously brought and considered by the courts and shouldn't be raised again here. Also in regard to this "time-of-day" statement, Charboneau has clearly interpreted it to mean that Officer Driesal had a nefarious intent and was acting upon it by causing Ms. Arbaugh to falsify her report. However, this is not what is plainly said by Ms. Arbaugh in the letter. That is, her statement in the letter is open to interpretation, one of which (in the opposite direction) may be that Officer Driesal was innocently attempting to assist Ms. Arbaugh fill out her statement by suggesting she just give an approximate time that she woke-up since she didn't look at a clock and didn't know the exact time. Whether this is the case, or whether Officer Driesal was in fact sinisterly framing an innocent man is not known from the plain language of the statements in Ms. Arbaugh's alleged letter. This is one of the reasons that the Exhibit G letter would be (and should be at this time) deemed inadmissible evidence, incapable of supporting any one of the particular interpretations that can be drawn therefrom.

Similarly, the significance of Ms. Arbaugh's statement that Tiff shot the new .22 rifle is not readily understood on its face either. Charboneau does attempt to explain it, and indeed there would be a vast amount of significance to the statement if the innuendo that he asserts were in fact true. Charboneau states: "Tira Arbaugh maintains in her letter that it was her sister, Tiff, who had possession of and accidentally shot the murder weapon (.22 nylon Remington) in an attempt to defend her mother." (*Response To Notice Of Court's Intent To Dismiss Pursuant To I.C. § 19-4906 And Request For Evidentiary Hearing*, p. 10). If, the implication made by Charboneau – that Tiff was the one that actually shot the victim in this matter – were something more than a mere innuendo, then there very well may be validity to Charboneau's claims. However, as they always are, this is a pretty big "IF".

The actual alleged statements of Ms. Arbaugh are: "I remember I heard Tif shoot the rifle while we were behind the sheep wagon. I remember this because it startled me so much that I accidentally fired moms [*sic*] pistol which also scared me." *Id.* Plainly, Ms. Arbaugh does not state that her sister accidentally shot her mother, nor does she even come close to inferring such. It is difficult to understand how Charboneau could even suggest this given Ms. Arbaugh's actual statements that the only reason she remembers the event at all is because the shot made by her sister startled her and caused her to shoot her gun as well. One would think that if you witnessed your sister accidentally shoot and kill your mother, that you would remember the event for this reason, and not because the noise startled you.

There is no explanation as to where Charboneau got the part about Ms. Arbaugh's sister trying to "defend" her mother, as there is nothing in the actual statements that

allows this to even be inferred. Both it and the implication that Tiff accidentally shot her mother appear to be total fabrications. The reason that such fabrications are resorted to by Charboneau might be better understood when noting that he characterizes the Exhibit G letter as the “most *critical newly-discovered* evidence”. (*Amended Petition For Post-Conviction Relief*, p. 6, ¶ 14). As shown, this is a mischaracterization of the letter because it contains nothing of significance and/or nothing that hasn’t been previous asserted to the courts in prior petitions. Thus, the only way Charboneau can get this court to believe it is in fact a “critical” piece of “newly-discovered” evidence is by misleading the court with the astonishing innuendo that the letter identifies the real shooter. Obviously, the letter does not do this and the court shouldn’t allow itself to be misled down a rabbit hole that the judicial process has already visited (at Charboneau’s behest) many times in the past.

Whatever the reason for the fabrication, the point is that the Exhibit G letter is not critical because it reveals nothing of significance; is not newly discovered because any statements of worth have been previously raised and considered; and is not evidence because the letter is unauthenticated hearsay (and remains hearsay even if it can be authenticated). As a result of all this, Exhibit G is not capable of supporting any claims brought by Charboneau in his fifth petition and accordingly, it too should be summarily dismissed.

## CONCLUSION

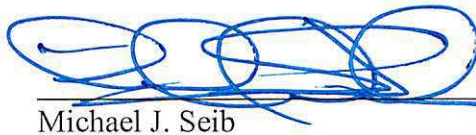
This court filed its notice of intent to dismiss Charboneau’s fifth petition for post-conviction relief back in July, appropriately finding back then that “Charboneau is not entitled to post-conviction relief and no purpose would be served by any further proceedings.” (*Notice O Court’s Intent To Dismiss Pursuant To I.C. § 19-4906*, filed July

1, 2011, p. 4). The court allowed Charboneau time to respond to its notice and to state an appropriate claim, which he attempted to do nearly four months later on October 25, 2011. However, instead of heeding the court's admonition to not present his previous petitions all over again, Charboneau does precisely that. He does attempt to make it look otherwise by wrapping his old claims in new packaging; even going to such lengths as to tender a fraudulent document in an apparent attempt to deceive the court into thinking new documents were in fact discovered, and new issues and claims have in fact sprouted therefrom.

However, with the curtain drawn back and the deceit exposed, it becomes apparent that Charboneau's fifth application for post-conviction relief fails in every aspect, and presents nothing but the same old tired arguments. Not one of the claims submitted by him are even capable of being drawn out to a logical conclusion. In fact, far from any such logical conclusions, the paths created by Charboneau's arguments lead to nothing but pure absurdity. This absurdity results primarily because the supporting evidence offered by Charboneau is inadmissible (the fact that at least one, if not all, the documents offered by Charboneau are fake might also explain some of the absurdity).

As a result, for this reason and all those stated above, the State's motion for summary disposition should be granted and in turn, Charboneau's fifth petition for post-conviction relief should be dismissed.

RESPECTFULLY SUBMITTED this 5 day of January 2012.




Michael J. Seib  
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of January 2012 I served a true and correct copy of the within and foregoing *Brief In Support Of Motion For Summary Disposition* upon the person(s) named below by mail, hand delivery or facsimile:

Brian Tanner  
137 Gooding St. West  
Twin Falls, ID 83301



Jerome County Prosecutor's Office



Theresa L. Viger's  
5/10/05

L. Unger  
5/4/05

IDAHO DEPARTMENT OF CORRECTION  
OFFENDER CONCERN FORM

Offender Name: Charboneau, Jaimi Dean

IDOC Number: 22091

Housing Unit: 1C1-0, C-2 / C-15

Date: 5-3-05

To: Mr. D. Shedd, staff paralegal

Issue/Concern: Mr. Shedd, will you please check the institutional legal mail log to encompass January of this year through April 29, and tell me if those records indicate that legal mail had been sent to me during that time frame from attorney "Greg J. Fuller".

Mr. Shedd, do you know if a federal attorney named Marc Haws is attempting to interfere with my legal mail?  
Thank you for your assistance in this matter.

Jaimi Dean Charboneau  
Offender Signature

Reply: ~~Yes~~ The Requested Logs are kept in the Mail Room  
Suggest you contact Mail Room.

A. D. Adams  
Staff Signature

5/4/05  
Date

White - Return to Offender

Yellow - Retain for Institution Files

Pink - Retain by Offender

Jaimi D. Charboneau, #22.091  
ISCI - Unit #9,C-68  
P.O. Box 14  
Boise, Idaho 83707-0014

DISTRICT COURT  
FIFTH JUDICIAL DIST.  
JEROME, IDAHO

MAY 23 2 22 PM '02

Petitioner/In Propria Persona

*Cheryl Watts*  
BY *15/9/11*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI D. CHARBONEAU, )

Petitioner, )

)

Case No. *SP0702-00040*  
~~1027 & 1028~~

-vs-

)

)

AFFIDAVIT OF BETSY CHARBONEAU-  
CRABTREE

STATE OF IDAHO, )

Respondent, )

)

STATE OF IDAHO )

(

SS:

COUNTY OF ELMORE)

I, BETSY CHARBONEAU CRABTREE, Being duly sworn upon my oath,  
depose and state as follows:

1) That I am over the age of (18) and competent to testify  
in these matters. And;

2) That I make this affidavit based on personal knowledge.  
And;

3) That I am Jaimi D. Charboneau's biological mother. And;

4) That I am Jimmy "Dabe" Griggs' biological mother. And;

AFFIDAVIT OF BETSY CHARBONEAU CRABTREE-1

Appendix #08 363 of 956

5) That Tira Arbaugh the youngest biological daughter of Marilyn Arbaugh was married to my son Jimmy Griggs after July 1st, 1984. And;

6) That Tira and my son Jimmy Griggs did have two children together, a daughter named Kadi now age 13, and a son named Jed now age 6. And;

7) That Tira Arbaugh Griggs did personally confess to me information about her feelings towards my son Jaimi Charboneau, her former step father. Tira told me that she was sorry for what Jaimi was going through. Tira told me that the tragedy which took the life of her mother on July 1st, 1984 did not happen the way it was played out in court. And;

8) That Tira also told me that Dan Adamson the first prosecutor to handle the case and, Mark Haws the trial prosecutor and, Jerome county sheriff's deputy Larry Webb, did instruct her on what they wanted her to say regarding the events which took place on July 1st, 1984 in regards to the shooting incident at the EL-Rancho 93 outside of Jerome, which involved my son Jaimi Charboneau, his recent ex-wife and the biological mother to Tira, Marilyn-Arbaugh. And;

9) That Tira did inform me that Mark Haws and an investigator named Gary carr who was working with law enforcement during the investigation regarding the death of Marilyn Arbaugh, had instructed her not to reveal certain facts about things which were found at the scene of the shooting on July 1st, 1984. Tira told me about two things which she said she was instructed to remain silent about they were her mother's holster and, her mother's guns. Tira told me that she had been instructed to say that the only gun that she could remember seeing that day was the rifle. And;

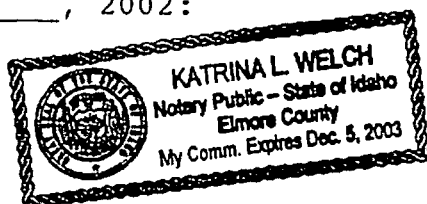
10) That I asked Tira if she would be willing to testify in court about that information and, she stated that she would be willing to do so. However, tragically Tira passed away recently due to a severe asthma attack before she had a chance to testify about this information.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Betsy Charboneau Crabtree  
Betsy Charboneau Crabtree

Executed this 6, day of May, 2002.

SUBSCRIBED and SWORN to before me this 6, day of May, 2002:



Katrina L. Welch  
Notary Public For Elmore County Idaho  
Residing at Mountain Home

My commission expires:

12 05 03  
(month) (day) (year)

AFFIDAVIT OF BETSY CHARBONEAU CRABTREE-3

JOHN L. HORGAN  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, ID 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB #3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 JAN 6 PM 5 01

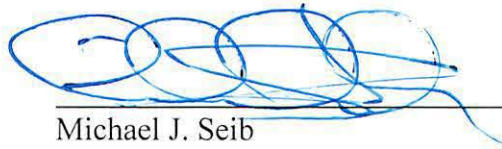
Michelle Emerson  
CLERK  
BY                       
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                      |   |                            |
|----------------------|---|----------------------------|
| JAIMI D. CHARBONEAU, | ) | Case No. CV-2011-638       |
|                      | ) |                            |
| Petitioner,          | ) | OBJECTION TO PETITIONER'S  |
|                      | ) | REQUEST FOR APPOINTMENT OF |
| vs.                  | ) | INVESTIGATOR               |
|                      | ) |                            |
| STATE OF IDAHO       | ) |                            |
|                      | ) |                            |
| Respondent.          | ) |                            |

COMES NOW, the Respondent, the State of Idaho, by and through its attorney of record, MICHAEL J. SEIB, Deputy Prosecuting Attorney, Jerome County, Idaho, and objects to any further taxpayer monies be expended in this matter until Respondent's *Motion For Summary Disposition*, filed January 5, 2012, has been ruled upon by the court. Respondent especially objects to expenses stemming from any kind of "investigation," because Petitioner, as is explained in more detail in Respondent's *Brief in Support of Motion For Summary Dismissal*, has failed to state a valid claim that is supported by admissible evidence; and is instead opting for a taxpayer funded investigation, via the post-conviction and legal discovery processes, to gather the evidence necessary to support his claims.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of January 2012.




---

Michael J. Seib  
Special Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of January 2012 I served a true and correct copy of the within and foregoing *Objection To Petitioner's Request For Appointment Of Investigator* upon the person(s) named below by mail, hand delivery or facsimile:

Brian Tanner  
137 Gooding St. West  
Twin Falls, ID 83301



Jerome County Prosecutor's Office



BRIAN M. TANNER  
 Attorney at Law  
 137 Gooding Street W.  
 Twin Falls, ID. 83301  
 Telephone: (208) 735-5158  
 Facsimile: (208) 734-2383  
 Idaho State Bar #7450

DISTRICT COURT  
 FIFTH JUDICIAL DIST  
 JEROME COUNTY IDAHO

2012 JAN 25 PM 1:54

Michelle Emerson

BY

CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
 IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

ORDER APPOINTING TOM BERRY AS  
 SPECIAL INVESTIGATOR AT COUNTY  
 EXPENSE

The Court, having considered the Petitioner's Ex-parte Motion for appointment of an  
 special, independent investigator and having found good cause therein, DOES HEREBY appoint  
 Tom Berry to act as a special investigator in this case.

Mr. Berry will be compensated at a rate set by the Court. His hours and transportation  
 expenses are also subject to review by this Court.

*Mr Berry may not commence work unless and until The Court approves in writing the rate of his compensation and/or travel expenses, and the Court is able to determine what work by Mr Berry is anticipated before hearing The States Motion for Summary Disposition. This is \**

DATED this 24 day of January, 2011.

Honorable Judge

*Robert Ely*

*\*outline of intended work may be made ex parte. The Court also requests a resume or CV from Mr Berry detailing qualifications and experience before compensation is set.*

ORDER APPOINTING TOM BERRY AS SPECIAL INVESTIGATOR 1




**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 3rd day of January, 2012, I caused a true and correct copy of the foregoing **ORDER APPOINTING TOM BERRY AS SPECIAL INVESTIGATOR AT COUNTY EXPENSE** to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

1/30/12  
Copies to  
State  
(Hand delivery)  
Brian Tanners office  
(via u.s. mail)

  
Tirza C. Delgado,  
Secretary

BRIAN M. TANNER  
 Tanner Law PLLC  
 137 Gooding St. West  
 Twin Falls, ID 83301  
 Phone: 208.735.5158  
 Fax: 208.734.2383  
 ISB #7450

Attorney for Petitioner

DISTRICT COURT  
 FIFTH JUDICIAL DIST  
 JEROME COUNTY IDAHO  
 2012 JAN 26 PM 1 45

*Michelle Emerson*  
 CLERK  
 BY *[Signature]*  
 DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
 DISTRICT OF THE STATE OF IDAHO,  
 IN AND FOR THE COUNTY OF JEROME**

JAIMI DEAN CHARBONEAU, )

Petitioner, )

v. )

THE STATE OF IDAHO, )

Respondent. )

Case No. CV-2011-638

**RESPONSE TO STATE'S MOTION  
 FOR SUMMARY DISPOSITION**

COMES NOW, the above named Petitioner, by and through counsel of record, and hereby responds to the State's Motion for Summary Disposition filed on January 5, 2012.

The Court originally filed a Notice of Intent to Dismiss on July 1, 2011. On December 27, 2011, the Court filed an order rescinding its original Notice of Intent to Dismiss. On January 5, 2012, the State filed its Motion for Summary Disposition and Brief in Support. The Court has not filed a subsequent Notice of Intent to Dismiss under Idaho Code 19-4906(b). As the Court

RESPONSE TO STATE'S MOTION FOR SUMMARY DISPOSITION - 1

presumably still has the option of granting summary disposition under Idaho Code 19-4906(c), the Applicant will respond to the State's Motion for Summary Disposition.

The burden is on the Applicant to prove that there are genuine issues of material fact and that he is therefore entitled to an evidentiary hearing. The Applicant has already met this burden. There is nothing in the State's Motion to Summarily Dismiss which disrupts the claims made by the Applicant in his Amended Application for Post Conviction Relief. The State essentially comments on three conspiracies alleged by the Applicant. The State does not however, provide any new information to rebut the allegations. No affidavits were filed with the Motion for Summary Disposition even though such affidavits are specifically allowed under I.C. 19-4906. The State does not provide any new information or affidavits from Cheryl Watts in relation to the "Watt's conspiracy." It provides no new information or affidavits from Bill Unger, Dewayne Shedd or Mark Haws in relation to the "Mail Interference Conspiracies." The State does not provide any new information or affidavits from the Arbaugh sisters in relation to "Arbaugh Conspiracy." The State merely speculates on what could have happened, without providing any evidence to support its arguments.

Further, the State never addresses the admissibility of the emails or Tira Arbaugh's letter based on the 'statement against penal interest' exception to the hearsay rule, which is argued in the Applicant's brief. The State does argue the authenticity of the Tira Arbaugh letter and emails, which is a legitimate request. It is for this reason that we have requested a handwriting expert.

Request for Additional Evidence under I.C. 19-4907:

Idaho Code 19-4907(a) provides that "the court may receive proof by affidavits, depositions, oral testimony, or other evidence and may order the applicant brought before it for the hearing." In preparation for an evidentiary hearing and in order to resolve authenticity issues,

RESPONSE TO STATE'S MOTION FOR SUMMARY DISPOSITION - 2

the Applicant requests a handwriting expert to examine the Tira Arbaugh letter and compare this letter with other writing samples previously submitted to the Court. The Applicant will further request that the signatures of Dewayne Shedd and Bill Unger be evaluated in order to determine authenticity.

In order to prepare for an evidentiary hearing and to examine all of the issues presented in the State's Motion for Summary Dismissal, the Applicant requests the opportunity to depose witnesses implicated in the various outlined conspiracies. The Applicant requests permission to depose Cheryl Watts, Dewayne Shedd, Bill Unger, Mito Alonzo, Melvin Wright, Mark Haws, Mike Hiskett and others possibly involved in the twenty seven year cover up of the Tira Arbaugh letter.


The Applicant further requests an order from the Court allowing him to examine the original Jaime Arbaugh file. This includes original witness statements, the original affidavits of probable cause and original police reports. The applicant will also request, along with discovery, all prosecutorial and investigating officer notes.

The actual Tira Arbaugh letter has never been addressed before. If it was available, as the State suggests, why would the applicant wait 27 years to present it? The letter is important, because it disputes important elements of the State's original case. For instance, Tira places the murder weapon in the hands of her sister, Tiffany Arbaugh, and not in the hands of the applicant. She also states that she was told by investigators to claim she heard additional shots, thus supporting the State's argument of cold blooded murder after the shoot out, even though this fact, according to Tira Arbaugh, is not true. These issues have never been presented before. As the applicant was sentenced to life in prison and as it appears that crucial facts were intentionally withheld from him prior to his resentencing in 1989, he is entitled to a full review.

RESPONSE TO STATE'S MOTION FOR SUMMARY DISPOSITION - 3

The Applicant requests that the State's Motion for Summary Dismissal be denied in order to allow further investigation.

DATED this 26<sup>th</sup> of January, 2012.

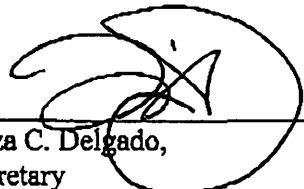
  
Brian M. Tanner  
Attorney for Applicant

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 26th day of January, 2012, I caused a true and correct copy of the foregoing **RESPONSE TO STATE'S MOTION FOR SUMMARY DISPOSITION** to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 JAN 26 PM 1 44

Michelle Emerson  
CLERK  
BY [Signature]  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

RENEWED MOTION TO APPOINT A  
WRITING SAMPLE EXPERT AT COUNTY  
EXPENSE

COMES NOW, the Petitioner, by and through counsel, hereby requests from the Court, an Order which will allow the Petitioner to hire an expert for the purpose of evaluating several handwriting samples. This request was originally made on October 25, 2011.

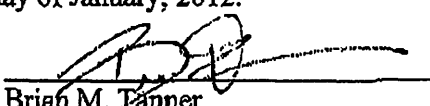
The principal task of the handwriting expert will be to analyze the letter of Tira Arbaugh, identified as Exhibit G in the Amended Petition and compare it to handwriting samples from Tira Arbaugh, identified as Exhibit I in the Amended Petition. The purpose of the handwriting expert will be to authenticate the Tira Arbaugh letter dated September 6, 1989 and addressed to Judge Becker, former Jerome County district court judge.

Tira Arbaugh is currently deceased.

The court may consider for appointment the following:

1. Forensic Handwriting Services (FHS)  
Larry C. Liebscher (10 hrs. and \$1,000).  
P.O. Box 993891 (mailing) 2095 Hilltop Dr. Ste. A (Office/Lab)  
Redding, CA 96099-3891; Redding, CA 96002  
T/P: 530-604-0314  
Fax: 530-222-1041  
www.ForensicHandwriting.com
2. Authentic Autographs Unlimited  
Drew Max (\$750.00 retainer)  
7473 W. Lake Mead Blvd. Ste., #100  
Las Vegas, NV 89128  
T/P: 720-610-3892  
T/P (autographs): 702-257-7111  
Fax: 702-257-1447  
www.aaunlimited.com
3. Lynn Terry (\$600.00)  
Former Boise Police Detective  
T/P: 208-385-0393
4. Detective Garland Lewis (\$600.00)  
Canyon County Sheriff Department  
T/P: 208-454-7483

Respectfully Submitted This 26<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
Brian M. Tanner  
Attorney for Applicant

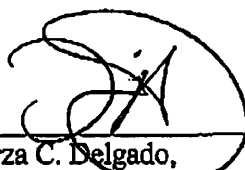


**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 26th day of January, 2012, I caused  
a true and correct copy of the foregoing **RENEWED MOTION TO APPOINT A WRITING  
SAMPLE EXPERT AT COUNTY EXPENSE** to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 JAN 26 PM 1 44

*Michelle Emerson*  
BY *Michelle Emerson*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO RELEASE ORIGINAL COURT  
DOCUMENTS RELATED TO FIRST  
DEGREE MURDER CASE AGAINST  
JAIME CHARBONEAU

COMES NOW, the Petitioner, by and through counsel, hereby requests from the Court, opportunity to examine original court documents in the first degree murder case against Jaime Dean Charboneau.

This request includes original witness statements, the original affidavits of probable cause and original police reports. This request also includes any and all prosecutor and investigating officer notes or hand notes related to this case. The request also includes the original 1989 letter from Tira Arbaugh if it is still in the files.

Respectfully Submitted This 26<sup>th</sup> day of January, 2012.

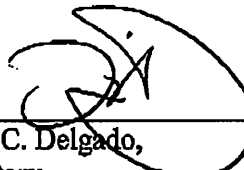
*Brian M. Tanner*  
Brian M. Tanner  
Attorney for Applicant

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 26<sup>th</sup> day of January, 2012, I caused  
a true and correct copy of the foregoing **MOTION TO RELEASE ORIGINAL COURT  
DOCUMENTS RELATED TO FIRST DEGREE MURDER CASE AGAINST JAIME  
CHARBONEAU** to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

---

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO,  
IN AND FOR THE COUNTY OF JEROME

Civil Minute Entry  
Jaime Dean Charboneau vs State of Idaho  
CV -2011-638  
DATE: 1-27-11 @ 2:00 p.m.

Honorable Robert Elgee, District Judge presiding  
Sue Israel, Court Reporter  
Shelly Creek, Minute Clerk  
Courtroom: District Court #2  
**MATTER BEFORE THE COURT:**

---

2:25 This being the time and place set for: Scheduling Conference, court convenes.  
Parties identified for the record.

Plaintiff: Brian Tanner is present on behalf of Mr. Charboneau  
Defendant: Mike Seib is present on behalf of the State of Idaho

2:26 Court inquires of Mr. Tanner regarding motions filed. I see State's motion for  
summary disposition. Do you wish to argue these at this time? Motion to release or  
allow Mr. Tanner to review original court documents? Are you looking to review  
Prosecutor's files?

2:27 Mr. Tanner: That is correct. This is based on the Paradis decision.

2:27 Court: Do you want to argue today or we can set at another time?

2:27 Mr. Tanner: We are here, am prepared to argue today.

2:27 State: That is fine

2:28 Court: we will proceed on motion to release documents and motion to  
appoint writing sample expert. Court reads order he signed regarding special  
investigator in case his writing is hard to read.

2:29 Court: I approved appt. as special investigator but want to know what he will  
charge, how much and what travel rates are and what is proposed. Let me take up  
other two motions we have referenced then we will take up scheduling. Let's start  
with Motion to release original court documents – should say review documents?

2:31 Mr. Tanner: Yes

2:31 Argument by Mr. Tanner



2:34 Argument by State: Object across the board.

2:35 Court: Let 's review Motion to review Prosecutor's files.

2:36 Mr. Seib: My argument will apply to all of his motions. Objecting to tax payer money being spent. Discusses brief. Highly suspect. There is nothing here.

2:39 Response by Mr. Tanner

2:39 2:41 Court responds.

2:47 Mr. Tanner responds: Discusses his hours working on the case.

2:47 Mr. Seib: I would ask the court to treat this as a motion to allow discovery. I would object to cart blanche turn your files over.

2:49 Court: This guy has been in prison for 20+ years. Can't be privilege. State does not have client other than detectives other than investigators at work. No work product. Theories of trial have long since been put to rest. Allegation is prosecutorial misconduct and if there is notes. Do know a little of the Paradis case. If there is something that should be withheld - I need to know what it is and why they can't see it.

2:55 State responds.

2:57 Court: If that letter was written by Miss Arbaugh - I have looked at it with a postmark, read Mr. Bennett. Not suggesting there is a conspiracy.

2:58 State: It won't matter. It is hearsay, won't come into play.

2:58 Court: It may or may not. That letter by itself raises huge questions. Then some apparent e-mail from IDOC about looking for a letter. This is serious stuff. I will let them look. I don't want the tax payers to foot a huge bill either. Spent several letters back and forth with Mr. Tanner as to what he has got, why. VERY serious claim. I will let him look. I don't want to have Jerome incur fees if they don't have to but if miscarriage of justice or something wrong with this case it needs looking at. Court will grant Mr. Tanner's motion. I am going to require in this order and you can write this Mr. Tanner: The defense will be allowed unless otherwise ordered by the court unlimited access to all prosecuting attorneys files and/or investigation officers notes or hand notes related to the case. And/or any prosecutors notes or hand notes. If you want to raise a claim, State, please do.

3:03 State: Would like the court to make legal matter why it is permitting discovery.

3:03 Court responds. Discovery is discretionary with the court.



3:05 Court discusses which documents.

3:05 Mr. Tanner: I called the court on several occasions and was told I needed an order.

3:06 Court: you will have that. Discusses going over discovery documents.

3:07 Court: Re: writing sample at counties expense. Let's hold off on that. Tremendous significance of envelope. Will deny that motion without prejudice. If you want to get me this other info. Mr. Tanner regarding Mr. Berry's qualifications. Think appropriate that defense is allowed to submit defense ex-parte regarding costs. I will do this preliminarily. I will make initial determinations what defense can do. Because I need more info. Before county begins to pay Mr. Berry – you can submit info. to me. Let's move to that issue. Want to schedule State's Motion to Dismiss. I do want to allow defense to explore some things before I hear that motion. Again, this is what I would call preliminary discovery

3:14 Mr. Tanner: All we would want to do before we hear State's motion to dismiss is have documents. Want to look at letter, attorney's notes and some original statements. In terms of rest of case would appreciate from Mr. Berry is to speak with people of interest of case. Duane Shedd, Bill Ungar, Cheryl Watts. Would like for investigation to talk to these people regarding the case. Also Mito Alonzo. Discusses gun found in courthouse.

3:18 Tom Berry addresses the court: When I looked at this matter early on – was told Mr. Ungar was fired. She told me he was terminated but it had nothing to do to his drug charge. Not sure what he was fired for.

3:19 Mr. Tanner: Another gentleman is Melvin Wright. He found gun. Also Mike Hiskett works at IDOC. We requested investigation internally with IDOC and they refused to investigate.

3:21 Mr. Berry: I would want to interview some of the officers and deputies in the Sheriff's Department. Was told they had a letter from the Pros. ordering them not to speak to me.

3:22 Court: I cannot make the Pros. Rescinding that letter or tell witnesses to talk to the defense. Probably go to a deposition then.

3:23 Court: Will allow those interviews and MR. Berry to conduct those interviews at counties expense. Need to know rates, travel rates, etc. before. The interviews can be done by phone, if they don't submit to phone interview. If you could do the ones farther than Boise by phone, local witnesses are fine. If IDOC does not permit employee to be interviewed. They might need a deposition. Inquires of time frame.



Mr. Tanner: Appreciate having a week or two. If I had to get depositions would need about 3 months. Depends.

Court: **Will set matter for 2-17-12 @ 2pm for State's Motion to Dismiss.**

I will sign order for Jerome County's expense for five people interviews and for you to take a review of the files. I don't need to set time limit for discovery. Will hear motion to dismiss and go from there. You can submit orders to Blaine County. You can submit originals to Jerome County under seal. View discovery as an ongoing process. Mr. Tanner to prepare order regarding reviewing prosecutor's document and denial of writing sample expert.

3:31 Mr. Tanner: Discusses burial of gun. Talked to owners of property – they are not allowing us access to property without Sheriff being with us. Family proposed to pay at their own expense. Filed petition.


3:32 Court: I recall seeing that. Inquires of Mr. Tanner. Do you think you need an order?

3:33 Mr. Tanner: Church is ok with us doing it they just want to have a Sheriff there while it is done.

3:34 Court: That will require a motion and order. That will involve county funds.

Court in Recess.

End Minute Entry

Attest:   
Shelly Creek,  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

233 WEST MAIN STREET  
JEROME, IDAHO 83338

FIFTH JUDICIAL DISTRICT  
JEROME COUNTY, IDAHO

JAIMI DEAN CHARBONEAU #22091, PLAINTIFF,

Plaintiff,

vs

STATE OF IDAHO, DEFENDANT,

Defendant.

2012 JAN 27 PM 4:59

*Michelle Emerson*

BY *[Signature]*  
DEPUTY CLERK

Case No: CV-2011-0000638

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Motion to Dismiss  
Judge:

Friday, February 17, 2012 02:00 PM  
Robert Elgee

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Friday, January 27, 2012.

Counsel:

Mailed ☒ X

Hand Delivered \_\_\_\_\_

BRIAN M. TANNER  
137 GOODING ST. W  
TWIN FALLS ID 83301

Counsel:

Mailed \_\_\_\_\_

Hand Delivered ☒ X

JOHN L HORGAN  
233 W. MAIN ST.  
JEROME ID 83338

cc: Judge Elgee  
(Mailed)

Dated: Friday, January 27, 2012  
Michelle Emerson  
Clerk Of The District Court

By: *[Signature]*  
M. Creek, Deputy Clerk



BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734 - 2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 JAN 31 PM 3 05

*Michelle Emerson*

CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

MOTION APPOINTING TOM BERRY AS  
SPECIAL INVESTIGATOR AT COUNTY  
EXPENSE

(FILED UNDER SEAL)

The Petitioner, by and through counsel of record, does hereby request the appointment of Tom Berry as special investigator. This motion is based on the affidavit of Tom Berry, together with a letter from Tom Berry and his Curie Vitae, attached herein as Exhibit A.

Mr. Berry is requesting compensation at a rate of \$25.00 per hour and traveling fees of .62 cents per mile. All other expenses will be addressed to the Court for preapproval.

Mr. Berry's duties will include collecting evidence found in the Petitioner's original files. He will also interview Cheryl Watts; former clerk of Jerome County, Mito Alonzo; former sheriff of Jerome county, Bill Unger; former employee of the Idaho Department of Corrections, Dewayne Shedd; paralegal for the Idaho Department of Corrections, Melvin Wright; former employee of Jerome County and Mike Hiskett, current employee at the Idaho Department of

MOTION APPOINTING TOM BERRY AS SPECIAL INVESTIGATOR 1

Corrections. Mr. Berry will attempt to conduct interviews by phone for those persons who reside beyond Boise, Idaho.

DATED this 31<sup>st</sup> day of January, 2012.

  
\_\_\_\_\_  
Brian M. Tanner

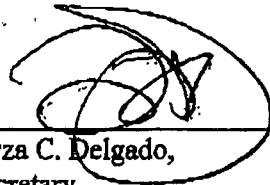
MOTION APPOINTING TOM BERRY AS SPECIAL INVESTIGATOR 2

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 31st day of January, 2012, I caused a true and correct copy of the foregoing **MOTION APPOINING TOM BERRY AS SPECIAL INVESTIGATOR AT COUNTY EXPENSE** to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

**EXHIBIT A**

**GENERAL AFFIDAVIT**STATE OF: IDAHOCOUNTY OF: ELMORE

PERSONALLY came and appeared before me, the undersigned Notary, the within named TOM BERRY, who is a resident of ELMORE County, State of IDAHO, and makes this his/her statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his/her knowledge:

That your affiant is over 18 years of age and a resident of the state of Idaho. I am a private contracted investigator. I have thirty years of Law enforcement experience that includes 10 years as a Felony Detective, 13 years as a Police Chief and the remainder as a Patrol Officer/Deputy. I also worked as a Patrol Deputy for the Owyhee County Sheriff's Office and as a Reserve Patrol Officer for the Boise Police Department. I have been retired from Law Enforcement since August of 2007. Since that time I have done some Private investigation work.

On 1/25/2012, I was appointed to serve as a special investigator in the Charboneau case by Fifth District Court Judge Robert Elgee. It is my understanding that for any Service I my provide the court, I will, upon review, be paid by Jerome County. I further understand that I will work at the direction as well from Public

Defender, Brian Tanner.

It is my intent to provide these services for the following fee:

Labor: \$25.00 per Hour with a 15 minute minimum.

Expenses: 62 cents per mile. Any other expenses will be done after prior  
Authorization from the court.

DATED this the 31<sup>st</sup> day of January, 2012

Tom Berry  
Signature of Affiant

SWORN to subscribed before me, this 31<sup>st</sup> day January, 2012

Rebecca Garvey  
NOTARY PUBLIC

Elmore County

My Commission Expires:

5/24/15

REBECCA A GARVEY  
Notary Public  
State of Idaho

## RESUME

Tom Berry  
231 NE Verde Court  
Mountain Home, Idaho 83647-0683  
Tel (H): 208-587-7546  
Tel (W): 208-319-4737  
Mobile: 208-319-4737  
E-mail: [tbchlef100@msn.com](mailto:tbchlef100@msn.com)

### Work Experience

#### ***Mountain Home Police Department, Mountain Home, Idaho***

Chief of Police (10-01-1994-08-30-2007)

Administered for a City Police Department that Had 30 Employees, and founded and/or supervised the Animal Control, Patrol, Major Crimes Investigations, Narcotics and Vice Investigative Unit, Community Policing Unit.

#### ***Elmore County Sheriff's Department, Mountain Home, Idaho***

Felony Detective (March 1981-October 1994)

Felony investigations including Homicides, Narcotics, Child Abuse, Burglary, and Major Crimes against Persons and Property.

#### ***Owyhee County Sheriff's Department, Murphy-Bruneau, Idaho***

Deputy Sheriff (1977-1981)

Resident Patrol Deputy for Owyhee County Sheriff's Department for the East end of the county and lived in Bruneau, Idaho.

#### ***Boise City Police Departments, Boise, Idaho***

Reserve Patrol Officer (1973-1976)

Patrol Duties in the City of Boise

\* Achieved the Rank of Specialist

\* Received the Basic and Advance Law enforcement Certificate from Boise Police.

**Education****Borah High School Boise, Idaho****(1967-1970)****Assorted College credits - Criminal Justice****Received College credits from Boise State University, College of Southern Idaho, Park College, and Northwestern University.****P.O.S.T. Academy****Meridian, Idaho****Basic, Intermediate, Advanced Certificates at time of Retirement  
1406 Hours of specialized Training.****Affiliations****Idaho Chiefs of Police Association (1994-2007)****Elected President in 2004****Professional References available upon Request.**





## SPECIAL INVESTIGATIONS

**TOM BERRY**  
Independent Investigator

Telephone: (208) 319-4737  
231 NE Verde Court  
Mountain Home, Idaho 83647-0683

Judge Robert Elgee  
Fifth District Court  
Jerome, Idaho

January 31, 2012

Dear Judge Elgee,

Please find attached the resume you requested regarding your decision to appoint me to serve as a Special Investigator in the Charboneau, Plaintiff vs State of Idaho, Defendant. I wish to thank you very much for this opportunity to serve, and your faith in me during this difficult search for Truth and Justice.

I have enclosed below, a fee and expense schedule that I hope meets with your approval. I arrived at the amount based on my own experience these many years in dealing with the difficult times that County Commissioners and City Council members have regarding the expenses and the careful need to monitor the tax payer's money.

The amount I have arrived at is the very lowest I have charged and I feel more than fair. Frankly I would rather spend my time doing the work than justifying the cost to the Commissioners. I will of course, maintain a very diligent work and expense log that will be in support of my billing time.

It is also my intent to of course. Seek preapproval and your authorization for any work I am required to do in the course of my duties to the court. I will do my best to condense the work to make sure that expenses are not duplicated as well.

**SEE SCHEDULE:**

\$25.00 per Hour with a 15 minute minimum. The minimum will cover short telephone calls or reviews as needed.

Expenses: 62 cents per mile. (This is the amount that should cover vehicle expense and travel time).

For any other expenses that may arise, I will try to seek preapproval from the court.

I hope Judge Elgee, the Fee Schedule meets with your approval. I will of course be open and will welcome any comment or concern that you may have with any of the information I have enclosed for your review.

Respectfully,

  
Tom Berry

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734 - 2383  
Idaho State Bar #7450

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

ORDER APPOINTING TOM BERRY AS  
SPECIAL INVESTIGATOR AT COUNTY  
EXPENSE

(FILED UNDER SEAL)

The Court, having considered the Petitioner's Motion for appointment of an special, independent investigator and having found good cause therein, DOES HEREBY appoint Tom Berry to act as a special investigator in this case under the following conditions.

Mr. Berry will be compensated at a rate of \$25.00 per hour. He will be compensated at a rate of .62 cents per mile. Any other expenses will be individually addressed to the Court for preapproval.

Mr. Berry will assist the Petitioner in collecting evidence found in the Petitioner's original files. He will also interview Cheryl Watts; former clerk of Jerome County, Mito Alonzo; former sheriff of Jerome county, Bill Unger; former employee of the Idaho Department of Corrections, Dewayne Shedd; paralegal for the Idaho Department of Corrections, Melvin

ORDER APPOINTING TOM BERRY AS SPECIAL INVESTIGATOR 1

Wright; former employee of Jerome County and Mike Hiskett, current employee at the Idaho Department of Corrections.

DATED this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Honorable Judge

ORDER APPOINTING TOM BERRY AS SPECIAL INVESTIGATOR 2

**CERTIFICATE OF MAILING**

I do hereby certify that a full, true and correct copy of the foregoing **ORDER  
APPOINTING TOM BERRY AS SPECIAL INVESTIGATOR AT COUNTY EXPENSE**  
was mailed to:

Brian M. Tanner  
137 Gooding Street West  
Twin Falls, ID 83301

☐ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

John L. Horgan  
233 West Main Street  
Jerome, ID 83338

☐ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Deputy Clerk

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

Filed FEB 02 2012

CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO ORDER JEROME COUNTY  
SHERIFF TO SUPERVISE INSPECTION OF  
LAND

The Petitioner, by and through counsel of record, hereby requests a hearing to compel the Jerome County Sheriff's Office to supervise the inspection of land located at El Rancho 93, which is situated on the southeast corner of Hwy 93 and crossroad W500N. The property is now owned by Farmland Reserve, Inc. and managed by Mr. Frank Judd.

In the letter provided by Tira Arbaugh to Judge Becker in 1989, which is one of the primary reasons for the current application for post conviction relief, Ms. Arbaugh states she was told to bury a gun which has relevance to the Petitioner's first degree murder conviction.

Mr. Judd has stated that he will not allow inspection of the land without supervision from the Jerome County Sheriff's Office.

The Petitioner has made arrangements for a Geophysical Investigation to be performed by Geophysical Survey, LLC and counsel for Petitioner has been advised that no damage or injury to the real property will occur as a result of the requested survey.

The equipment provided by Geophysical Survey, LLC has the capacity to detect metal at depths in excess of 18 inches and that the property has not been inspected before with equipment that has a capacity to detect metal in excess of 18 inches.

The Petitioner, through his investigator, Tom Berry, has requested permission to conduct said survey; however, permission has been denied and the Jerome County Prosecuting Attorney's Office has instructed Farmland Reserve, Inc. to refuse access.

For the following reasons, the Petitioner requests opportunity to inspect the land currently identified as El Rancho 93 in Jerome, Idaho and also requests that such inspection be supervised by the Jerome County Sheriff's Office.

A hearing is requested for this motion.

Submitted This 1<sup>st</sup> day of February, 2012.

  
Brian M. Tanner

**CERTIFICATE OF DELIVERY**

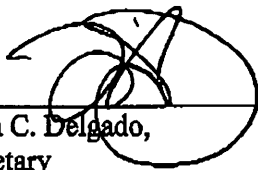
I undersigned, certify that on the 18<sup>th</sup> day of February, 2012, I caused  
a true and correct copy of the foregoing **MOTION TO ORDER JEROME COUNTY  
SHERIFF TO SUPERVISE INSPECTION OF LAND** to the following person(s):

John L Horgan  
233 W. Main St.  
Jerome, ID 83338

☐ Mailed  
☐ Hand Delivered  
☒ Faxed

Jerome Sheriff  
300 N. Lincoln Ave.  
Jerome, ID 83338

☐ Mailed  
☐ Hand Delivered  
☒ Faxed

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary



BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed **FEB 15 2012**  
CLERK *Marshall Emerson*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs

STATE OF IDAHO.

Respondent.

Case No CR 11-638

**ORDER ALLOWING THE  
PETITIONER TO INSPECT, REVIEW  
AND OBTAIN DOCUMENTS IN THE  
PETITIONER'S FIRST DEGREE  
MURDER FILE**

THE COURT, having considered the Petitioner's request to inspect and examine documents at hearing on January 27, 2012 and having found good cause, IT IS THE ORDER OF THE COURT, that Petitioner, through his attorney, or through his investigator, Tom Berry, be allowed, unless specifically stated otherwise by the Court, unlimited access to all documents and records in the Petitioner's First Degree Murder files.

This Order allows access to any and all prosecuting attorney files and/or personal notes related to the Petitioner's First Degree Murder charge. The Petitioner will be allowed to inspect, copy or obtain any and all police officer notes and investigating officer notes or records. The Petitioner will be allowed to obtain original witness statements, including the original witness statements from Tira and Tiffany Arbaugh and the original letter written by Tira Arbaugh to Judge Becker in 1989. The Petitioner will further be allowed access to original affidavits of

probable cause, including Elza Hall's affidavit of probable cause. He further will have access to and be able to obtain Officer R.E. Clarks crime scene drawings and any and all trial transcripts which may be part of the files.

DATED this 3 day of May, 2012

Honorable Judge

*W.A. Eg*

*Eg*



**CERTIFICATE OF MAILING**

I do hereby certify that a full, true and correct copy of the foregoing **ORDER**  
**ALLOWING THE PETITIONER TO INSPECT, REVIEW AND OBTAIN DOCUMENTS**  
**IN THE PETITIONER'S FIRST DEGREE MURDER FILE** was mailed to:


Brian M. Tanner  
137 Gooding Street West  
Twin Falls, ID 83301

( ) Facsimile  
( ) U.S. Mail  
( ) Certified Mail  
(☒) Hand Delivered

John L. Horgan  
233 West Main Street  
Jerome, ID 83338

( ) Facsimile  
( ) U.S. Mail  
( ) Certified Mail  
(☒) Hand Delivered

DATED this 19 day of Feb, 2012.

  
\_\_\_\_\_  
Deputy Clerk

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

Filed FEB 15 2012  
*Michelle Emerson*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Case No CR 11-638

Petitioner,

vs

**ORDER DENYING THE  
PETITIONER'S MOTION FOR  
COURT APPOINTED  
HANDWRITING EXPERT**

STATE OF IDAHO.

Respondent.

THE COURT, having considered the Petitioner's request to appoint a handwriting expert,  
and having considered the request at hearing on January 27, 2012, the motion is HEREBY  
DENIED WITHOUT PREJUDICE.

DATED this 3 day of February, 2012

*Ally Ego*  
Honorable Judge



**CERTIFICATE OF MAILING**

I do hereby certify that a full, true and correct copy of the foregoing **ORDER DENYING THE PETITIONER'S MOTION FOR COURT APPOINTED HARDWRITING EXPERT** was mailed to:

Brian M. Tanner  
137 Gooding Street West  
Twin Falls, ID 83301

( ) Facsimile  
( ) U.S. Mail  
( ) Certified Mail  
(☒) Hand Delivered

John L. Horgan  
233 West Main Street  
Jerome, ID 83338

( ) Facsimile  
( ) U.S. Mail  
( ) Certified Mail  
(☒) Hand Delivered

DATED this 17<sup>th</sup> day of Feb, 2012.

  
\_\_\_\_\_  
Deputy Clerk



---

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

**Civil Minute Entry**  
**Jaimi Dean Charboneau vs State of Idaho**  
CV 2011-638  
DATE: 2-17-12

**Honorable John K Butler, District Judge presiding**  
**Candace Childers, Court Reporter**  
**Traci Brandebourg, Minute Clerk**  
**Courtroom: District Court #2**  
**MATTER BEFORE THE COURT:**

---

2:47 p.m.

This being the time and place set for: motion to dismiss, court convenes.

Parties identified for the record.

Mr. Brian Tanner is present on behalf of the Petitioner, not present

Mr. Mike Seib is present on behalf of the State of Idaho.

2:27 p.m.

Court inquires about Mr. Berry's driving time.

2:48 p.m.

Mr. Tanner responds. Mr. Berry's driving time is included.

2:49 p.m.

Mr. Berry addresses the Court. Not charging driving time but mileage rate.

2:50 p.m.

Court reviews file herein.

2:50 p.m.

Mr. Seib submits on the brief.

2:50 p.m.

Mr. Tanner responds. Reviews letter regarding Tira Arbaugh. Responds to inquiry of the Court.

2:53 p.m.

Mr. Seib has nothing further.

2:54 p.m.

Court addresses issues in the State's brief. Court believes that Petitioner has tender a factual basis. Denied State's motion for summary disposition. Can go forward with evidentiary.

3:25 p.m.

Mr. Tanner addresses the Court. Some witnesses will not talk to them without a subpoena. Need to set up depositions. Still want to go to El Rancho to look for the rifle. Would also like to look at the Attorney General's files.

3:32 p.m.

Court will authorize taking of depositions of individuals requested by Mr. Tanner.

3:32 p.m.

Mr. Berry addresses the Court regarding Deputy Rick Ustick.

3:34 p.m.

Court will authorize the deposition of Rick Ustick. Will authorize subpoenas and depositions. Court addresses Mr. Seib-can move for a protection order. Court needs more information regarding the gun-arrangements with the Sheriff and the landowner. Will give the State an opportunity to object to the depositions.

3:37 p.m.

Mr. Tanner believes the genuine of the letter is important.

3:38 p.m.

Court isn't saying the Court is accepting the letter as being authentic but it an open argument. Mr. Tanner can apply for a handwriting expert.

3:39 p.m.

Mr. Tanner will send a proposed order.

3:39 p.m.

Mr. Seib inquires of if all the documents will be provided to the State.

3:39 p.m.

Court reviews understanding of subpoena duces tecum.

3:43 p.m.

Mr. Berry inquires of the Court regarding the Jerome County Clerk's Office and the Jerome County Sheriff's Office obtaining evidence.

3:45 p.m.

Court doesn't believe order filed on 2-15-12 doesn't cover the Clerk's Office. Order will need to be submitted regarding the Clerk's Office and the Sheriff's Office.

3:46 p.m.

Mr. Tanner would also like to do a subpoena duces tecum regarding Mark Hawes.

3:46 p.m.

Court will grant that.



Court in Recess.

End Minute Entry. Attest:  Traci Brandebourg, Deputy Clerk



DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY ID 40

Michelle Emerson

BY DEPUTY CLERK

Case Number: 2011-638

STATE OF TEXAS  
DEFENDANT

## 410 of 956

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed MAR 08 2012

CLERK *Michelle Emerson*

DEPUTY CLERK

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Case No CR 11-638

Petitioner,

vs

**ORDER GRANTING THE  
PETITIONER'S MOTION FOR  
COURT APPOINTED  
HANDWRITING EXPERT**

STATE OF IDAHO.

Respondent.

THE COURT, having considered the Petitioner's request to appoint a handwriting expert at hearing on February 17, 2012, hereby GRANTS the Petitioner's request for a handwriting expert at county expense.

The handwriting analysis will be conducted by Lynn Terry, who is a former Boise Police Detective. He will be compensated at a rate of \$150.00 per hour. The Court authorizes compensation for three and a half hours.

DATED this 28 day of February, 2012

*Robert Egan*  
Honorable Judge *Egan*

**CERTIFICATE OF MAILING**

I do hereby certify that a full, true and correct copy of the foregoing **ORDER GRANTING THE PETITIONER'S MOTION FOR COURT APPOINTED HANDWRITING EXPERT** was mailed to:

Brian M. Tanner  
137 Gooding Street West  
Twin Falls, ID 83301

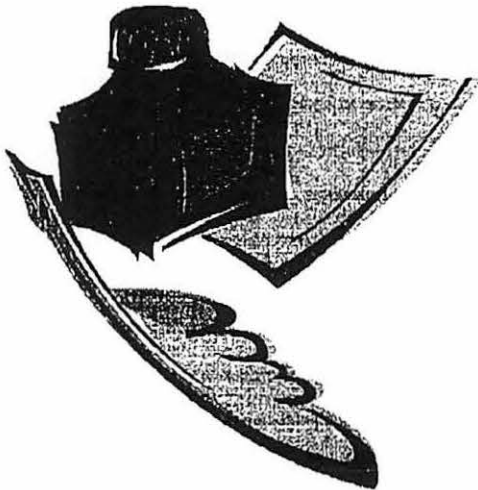
( ) Facsimile  
☒ U.S. Mail  
( ) Certified Mail  
( ) Hand Delivered

John L. Horgan  
233 West Main Street  
Jerome, ID 83338

( ) Facsimile  
( ) U.S. Mail  
( ) Certified Mail  
☒ Hand Delivered *Box*

DATED this 7 day of March, 2012.

  
\_\_\_\_\_  
Deputy Clerk



Lynn Terry  
Questioned Document Examiner  
5220 E. Softwood Drive  
Boise, Idaho 83716  
Telephone (208)385-0393

Mr. Brian Tanner

An expert witness in the field of document examination, I am a Boise State University graduate with a degree in Criminal Justice Administration completed in 1976. I am currently a retired police officer following 30 years of employment with the Boise Police Department in Boise, Idaho.

Trained by the Boise Police Department's current examiner Detective Sgt. Frank Richardson, my internship lasted two years. The training included assigned reading, individual instruction on actual document examinations, and required schooling outside of the department. I attended schools for document examiners put on by the US Secret Service and the FBI. As a member of SWAFDE (Southwest Association of Forensic Document Examiners) my continuing education included instructional seminars conducted by this organization. I was the sole questioned document examiner for the Boise Police Department. During my tenure at the Boise Police Department I built a laboratory that included: ESDA (Electro Detection Apparatus), a comparison microscope, and an infra-red camera with filters for identifying ink; I compared hundreds of documents for common authorship; and I testified in Ada County Magistrate Court, Ada County District Court, and US Federal Court as an expert witness in the field of document examination. I trained two investigators who later became qualified document examiners.

Sincerely

Lynn Terry

Mr. Brian Tanner

Per our conversation yesterday here is a list of my qualifications as an expert witness in the field of document examination.

You examiner has been employed by the Boise police department for 30 years of now is currently retired.

I was trained by the Boise Police Departments current examiner Detective Sgt Frank Richardson. That internship lasted two years. The training included assigned reading regarding document examination. Individual instruction on actual documents examinations and required schooling outside the department. I attended a school for Document examiners put on by the US Secret Service. I also attended a school for document examiners put on by the FBI. I then joined SWAFDE (Southwest Association of Forensic Document Examiners). I also attended seminars conducted by that organization. I then took over the sole role as the questioned document examiner for the Boise Police Department. During my tenure at the Police Department I built a laboratory that consisted of an ESDA (Electro Detection Apparatus), a comparison Microscope, a infrared camera with numerous filters for identifying ink. I compared hundreds of documents for common authorship. I testified in Ada county Magistrate Court Ada County District Court and US Federal Court as an expert witness in the field of document examination. I then trained two investigators who later became qualified document examiners.

Sincerely

Lynn Terry



DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

Filed MAR 08 2012  
*Michelle Emerson*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs

STATE OF IDAHO.

Respondent.

Case No CR 11-638


**SECOND ORDER ALLOWING THE  
PETITIONER, TO INSPECT, REVIEW  
AND OBTAIN DOCUMENTS  
RELATED TO THE PETITIONER'S  
FIRST DEGREE MURDER FILE**

THE COURT, having considered the Petitioner's request to inspect and examine documents at hearing on February 17, 2012 and having found good cause, IT IS THE ORDER OF THE COURT, that Petitioner, through his attorney, or through his investigator, Tom Berry, or any other agent of the Law Office of Brian M. Tanner be allowed, unless specifically stated otherwise by the Court, unlimited access to all documents and records in the Petitioner's First Degree Murder files.

This Order allows access to any and all prosecuting attorney files and/or personal notes related to the Petitioner's First Degree Murder charge. The Order also allows access to any and all files, documents, photographs, correspondence from and between any officer, clerk, attorney or investigator, and reports, including autopsy reports and ballistics reports, which are in possession of the Jerome County Clerk or Jerome County Sheriff.

The original order focused on access to the prosecutor's files. This order grants access to the files in possession of the clerk, prosecutor and sheriff which may or may not have been entered into evidence for the Peititioner's first degree murder case.

DATED this 28 day of February, 2012

  
Honorable Judge Elgee



**CERTIFICATE OF MAILING**

I do hereby certify that a full, true and correct copy of the foregoing **SECOND ORDER ALLOWING THE PETITIONER TO INSPECT, REVIEW AND OBTAIN DOCUMENTS RELATED TO THE PETITIONER'S FIRST DEGREE MURDER FILE** was mailed to:

Brian M. Tanner  
137 Gooding Street West  
Twin Falls, ID 83301

( ) Facsimile  
☒ U.S. Mail  
( ) Certified Mail  
( ) Hand Delivered

John L. Horgan  
233 West Main Street  
Jerome, ID 83338

( ) Facsimile  
( ) U.S. Mail  
( ) Certified Mail  
☒ Hand Delivered *Bob*

DATED this 9<sup>th</sup> day of March, 2012.

*J Brande Murray*  
Deputy Clerk



DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

Filed MAR 08 2012

CLERK *Michelle Emerson*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs

STATE OF IDAHO.

Respondent.

Case No CR 11-638

**ORDER DENYING THE STATE'S  
MOTION FOR SUMMARY  
DISMISSAL PURSUANT TO I.C. §19-  
4906**

THE COURT, having considered the State's Motion for Summary Dismissal and having reviewed the motion and oral argument by the parties at a hearing on February 17, 2012, it is the decision and Order of the Court, that the State's Motion for Summary Dismissal is HEREBY DENIED.

DATED this 21 day of February, 2012

*Jeffrey E. Egan*  
Honorable Judge *Egan*



**CERTIFICATE OF MAILING**

I do hereby certify that a full, true and correct copy of the foregoing **ORDER DENYING THE STATE'S MOTION FOR SUMMARY DISMISSAL PURSUANT TO I.C. §19-4906** was mailed to:


Brian M. Tanner  
137 Gooding Street West  
Twin Falls, ID 83301

( ) Facsimile  
☒ U.S. Mail  
( ) Certified Mail  
( ) Hand Delivered

John L. Horgan  
233 West Main Street  
Jerome, ID 83338

( ) Facsimile  
( ) U.S. Mail  
( ) Certified Mail  
☒ Hand Delivered *Box*

DATED this 9<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_  
Deputy Clerk

JOHN L. HORGAN  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, ID 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB #3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 MAR 9 PM 3 47

*Michelle Emerson*  
BY                       
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                      |   |                          |
|----------------------|---|--------------------------|
| JAIMI D. CHARBONEAU, | ) | Case No. CV-2011-638     |
|                      | ) |                          |
| Petitioner,          | ) | MOTION FOR PERMISSION TO |
|                      | ) | APPEAL FROM AN           |
| vs.                  | ) | INTERLOCUTORY ORDER      |
|                      | ) |                          |
| STATE OF IDAHO       | ) |                          |
|                      | ) |                          |
| Respondent.          | ) |                          |

COMES NOW, the Respondent, the State of Idaho, by and through its attorney of record, MICHAEL J. SEIB, Deputy Prosecuting Attorney, Jerome County, Idaho, and, pursuant to Idaho Appellate Rule 12, moves this court for permission to appeal to the Idaho Supreme Court the interlocutory *Oder Denying The State's Motion For Summary Dismissal*, made by this court and filed March 9, 2012. This motion is made on the grounds that the Order is not otherwise appealable at this time under the Idaho Appellate Rules (and thus permission by this court must be sought), but the Order nonetheless involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order will materially advance the orderly resolution of the litigation.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of March 2012.



---

Michael J. Seib  
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of March 2012 I served a true and correct copy of the within and foregoing *Motion For Permission To Appeal From An Interlocutory Order* upon the person(s) named below by mail, hand delivery or facsimile:

Brian Tanner  
137 Gooding St. West  
Twin Falls, ID 83301

  
\_\_\_\_\_  
Jerome County Prosecutor's Office



BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2012 MAR 19 AM 9 49  
Michelle Emerson  
BY CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO RETURN ORIGINAL HAND  
WRITTEN LETTER FROM DEWAYNE  
SHEDD

COMES NOW, the Petitioner, by and through counsel of record, and does hereby request the Court return to counsel of record, the original handwritten letter from Dewayne Shedd, which is identified as *Exhibit B* in the Petitioner's Amended Petition for Post Conviction Relief.

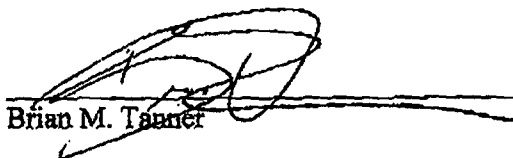
The Petitioner intends to pass this letter on to Lynn Terry, who has been appointed as a handwriting expert in this case.

Dewayne Shedd denies any interference in the confiscation of the petitioner's mail, although the note states otherwise. The Petitioner intends to compare the handwritten note with other handwriting from Dewayne Shedd in order to authenticate the note.

For this reason, the Petitioner requests that this original document be returned to counsel of record in a sealed envelope.

MOTION TO RETURN ORIGINAL HAND WRITTEN LETTER FROM DEWAYNE SHEDD

Respectfully Submitted This 19 day of March, 2012.

  
Brian M. Tanner

MOTION TO RETURN ORIGINAL HAND WRITTEN LETTER FROM DEWAYNE SHEDD


- 2

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 19th day of March, 2012, I caused  
a true and correct copy of the foregoing **MOTION TO RETURN ORIGINAL HAND  
WRITTEN LETTER FROM DEWAYNE SHEDD** to the following person(s):

John L. Horgan  
233 W. Main St.  
Jerome, ID 83338

☐ Mailed  
☐ Hand Delivered  
☒ Faxed

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary



JOHN L. HORGAN  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, ID 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB #3068

DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
JEROME COUNTY, IDAHO

2012 MAR 20 PM 4 53

*Michelle Emerson*

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI D. CHARBONEAU,

Case No. CV-2011-638

Petitioner,

NOTICE OF HEARING

vs.

STATE OF IDAHO

Respondent.

NOTICE is hereby given that the above-entitled action has been set, per IRCP 7(b)(4), for a telephonic hearing on the State's Motion For Permission to Appeal Interlocutory Order, on **April 2, 2012 at the hour of 10:30 a.m.** The Jerome County Prosecutor's Office will initiate the phone calls to Brain Tanner, attorney for Jaime D. Charboneau, at the confirmed telephone number of: (208)735-5158; and Judge Robert Elgee at (208)788-5537.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of March 2012.

*[Signature]*  
Michael J. Seib

Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of March 2012 I served a true and correct copy of the within and foregoing *Notice of Hearing* upon the person(s) named below by mail, hand delivery or facsimile:

Brian Tanner  
137 Gooding St. West  
Twin Falls, ID 83301

  
\_\_\_\_\_  
Jerome County Prosecutor's Office

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2012 MAR 23 PM 3 37

Michelle Emerson

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

RESPONSE TO STATE'S REQUEST FOR  
PERMISSION TO APPEAL

COMES NOW, the Petitioner, by and through counsel of record, and does respond to the  
State's request for leave to appeal.

The State has not provided any legal authority for the request for leave to appeal.  
Further, according to the court appointed investigator for the Petitioner, the State and other  
agencies have actively obstructed the Petitioner's investigation. The State should not benefit  
from its own efforts in delaying or obstructing the investigation. *See Affidavit of Tom Berry  
attached herein.*

Respectfully Submitted This 23<sup>rd</sup> day of March, 2012.

  
Brian M. Tanner

RESPONSE TO STATE'S REQUEST FOR PERMISSION TO APPEAL - 1

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 23rd day of March, 2012, I caused a true and correct copy of the foregoing **RESPONSE TO STATE'S REQUEST FOR PERMISSION TO APPEAL** to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Secretary

**GENERAL AFFIDAVIT****STATE OF: IDAHO****COUNTY OF: ELMORE**

PERSONALLY came and appeared before me, the undersigned Notary, the within named TOM BERRY, who is a resident of ELMORE County, State of IDAHO, and makes this his statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are and correct to the best of his knowledge.

That your affiant is over 18 years of age and a resident of the state of Idaho. I am a privately contracted investigator. That I have been appointed by Fifth District Judge Robert Elgee to act as a special investigator and to assist Public Defense Attorney Brian Tanner with the investigation into the Jalmi Charboneau Homicide case.

This Affidavit is being made in an effort to update Judge Elgee on the investigation and the efforts to find and review documents and evidence related to the Charboneau Murder case. Your affiant will attempt to keep the court aware of what appears to be a consistent attempt by certain principals in this matter to obstruct or delay your affiants search for truth and justice as it relates to the Murder Case that convicted Jalmi Charboneau of Capital Murder.

In an effort to provide the court with as much information as possible your affiant is providing to the court the following information as it related to the many attempts at obtaining information as it related to the Charboneau Murder case;

1. On 9/7/2011, I contacted former Jerome County Deputy Sheriff Orville Balzer. At first contact Mr. Balzer refused to be interviewed and told me that it would require a subpoena for him to discuss the case. Mr. Balzer later agreed to a very limited interview that related to five specific documents. The documents consisted of four specific pages of police supplementary reports that resulted in his identifying them as being in his handwriting and written by him. I then showed Mr. Balzer the copy of the handwritten note that mentioned a conversation with the court clerk, Cheryl Watts, and that the writer of the letter had later discussed the matter with Chief Deputy Mito Alonzo. This document carried the signature of Orville Balzer. Mr. Balzer clearly identified his signature but stated that he had not written the body of the note. The remaining text of the document is a forgery as it related to trying to identify Balzer as the writer of the entire document.
2. On 9/11/2011, I contacted Cpl. Mike Hiskett, who is a correctional officer at the Idaho Correctional Institution in Orofino (ICIO). I requested an interview with him concerning the circumstances surrounding his finding a packet containing legal documents, and other information, as well as a copy of an envelope and letter allegedly written and signed by Tira Aubaugh and addressed to Judge Becker. Officer Hiskett refused to speak

to me about this matter and stated he would not discuss any of it without first obtaining permission to do so from Warden Terema Carlin.

3. On 9/15/2011, I spoke with Warden Carlin via telephone. As soon as I gave her my name she stated it must be about the Charboneau case. I told her it was and I then requested permission to interview Cpl. Hiskett and Dewayne Shedd. She told me she would have to check into it and call me back. On 9/16/2011, Warden Carlin called me and advised that Shedd was currently (at that time) working at the prison complex in Boise. She also advised me that she had been ordered by the Idaho Attorney General's Office not to grant me permission to speak to any facility employees.
4. On 9/15/2011, I spoke with Frank Judd via telephone to his office in Salt Lake City, Utah. Mr. Judd is the property manager for Farmland Reserve Inc., who owns the property in Jerome County on which the murder crime scene is located. I asked Mr. Judd if he and his company would grant Permission for the property to be searched with metal detectors and excavation in an attempt to locate any possible evidence related to the case that may still be there. Mr. Judd told me a number of requirements that would need to be met prior to any search of the property. The most main requirement was that a representative of the Jerome County Sheriff's Office must be present at the time of any search at the property. No Search would be allowed without the Sheriff's Department being there during the search.

5. On 10/21/2011, I met with Captain Jack Johnson at the Jerome County Sheriff's Department. Captain Johnson told me that his agency could not help me with Mr. Judd's requirement that they be a part of the search effort on the Property. He told me that he had a letter from Jerome County Prosecutor Horgan telling the Sheriff's Department that they could not assist with any such search for evidence nor were they to assist in any other manner with persons who were representing the interests of Charboneau.
6. On 1/27/2012, I spoke in person with the Jerome County Clerk's Office and advised them that I wish to see any and all items related to the Charboneau Murder case that was in the custody of the Jerome Clerks Office. That request was passed on to District Court Clerk, Tracee.
7. On 2/07/2012, I went to Garden City and conducted an interview with former Jerome County District Court Clerk Cheryl Watts. During the interview I showed and allowed her to read a copy of the letter written by Tira Arbaugh and sent to Judge Becker. She also examined the copy of the envelope that displayed the Postmark.  
Mrs. Watts told me that based on the postmark on the envelope, it was clear to her that the letter was received by Jerome County officials. I asked her who would have handled mail for Judge Becker. She told me that normally the persons that had access to Judge Becker's Correspondences was herself, her other Clerk, Wendy, and Judge Becker's clerk in Gooding. She then told me that she believed that John Horgan, the current Jerome County Prosecutor, was also Judge Becker's law clerk at the time, and that



he would also have had access to the Judge's mail as well. I asked Mrs. Watts if she recalled the story about the hand gun found by in the court house attic by maintenance man Melvin Wright. She said that yes, she did recall the stories going around about the gun. She told me that as she recalled, the gun was found somewhere in close proximity to the Prosecutors office at the end of the hall. She told me that, as she recalled, there was a door there that lead up into the attic at that point.

8. On 2/8/2011, I spoke with former Jerome County Sheriff's Deputy Mito Alonzo via telephone and requested an interview with him. Alonzo told me that he would not do a single thing that would assist with Charboneau getting out of prison, and that he would not speak to me or anyone without a subpoena ordering him to do so.
9. On 2/8/2012, I again spoke with the office of Warden Carlin and again requested permission to interview Hiskett and Shedd. I was advised by the Wardens assistant, Colleen that I was again denied permission to speak to them, as apparently the Attorney Generals order not to cooperate was still in place, and that I would need a court order in the form of a deposition to do so in the future.
10. On February 23, 2012 at approximately 9:10 am I arrived at the Jerome County Prosecutors Office. With me at this time was my associate Tom Bergstom, who was with me to assist in reviewing documents. My reason for contacting the Prosecutors office was to act upon a Court order issued

by Judge Robert Elgee. The order required the Jerome County Prosecutors Office to allow me to inspect, review and obtain documents in the Charboneau First Degree Murder file.

Upon arrival I asked to speak with Deputy Prosecutor Mike Sieb, who met with me a few minutes later. Mr. Sieb asked if Brian (Tanner) had got a hold of me. He was referring to the fact that he had advised Mr. Tanner that it had been decided that I would not be allowed to review the documents unless a Deputy Sheriff was present. And further that the Sheriff's office had advised that they would not have anyone available today or until next week.

I told Mr. Sieb that I had talked with Mr. Tanner and that it was our position that the order had been out for some time and that the Judge had signed the order on the 3rd. Mr. Sieb then told me he would get back with me some time when the Sheriff was available.

I then asked Mr. Sieb if he was then saying that he was denying me access then. He said not at all. I next advised Mr. Sieb that I was there to execute the order from the judge and if I couldn't see them then he was denying me access. He said good deal and to walked away.

In the afternoon of 2/23/2012 I spoke via telephone with Jerome County Chief Deputy, Captain Jack Johnson. I asked Captain Johnson if anyone from the Jerome county Prosecutors Office had contacted him anytime

about assisting with my reviewing the document. Captain Johnson told me that a short time prior to my call he had received a call from the Prosecutors office concerning that request. He then confirmed for me that this was first he had heard of it, though he could not say if perhaps they had spoken to the Sheriff. He said he would try to clear some time up next week to help.

11. On 2/27/12, I went to the Jerome County Prosecuting attorney's office to review any records they had in their possession related to the Murder case. Also with me during most of this time was Attorney Brian Tanner. I was shown to a room by Mike Sieb that contained four or five boxes. The only records of the murder case I found were Court Transcripts. I did not find any original case notes, evidence lists, witness statements, police reports, or any item in any form that would, based on my experience, have been a part of the Prosecutors case file that would have been used during the prosecution of a felony crime in any form, much less that of a Capital Murder trial. I was not provided with any explanation as to the location of any other files or documents that would normally be associated with a working prosecution case file. Mr. Sieb did make a statement that perhaps the Attorney General's Office had them all.

12. On 3/13/2012, I left a phone message for Jerome Sheriff's Captain Jack Johnson with a request for a time and location to see all the Charboneau Murder case files, as provided for in the Judge's Order. On 3/14/2012 I received a telephone call back from Captain Johnson and he advised me

that he and his staff could not locate any of the requested Murder Case files and had no idea what had become of them.

13. On 3/14/2012, I received a call from District court Clerk Tracee. She advised me that because of staffing issues as well as a demand for her time, I would not be able to see the items in the Clerks custody until March 30th 2012 at 10:00 am. I noted to her that I knew how busy she was and that we were anxious to view the records but did certainly understand the need for it to be done the best possible way for all concerned.

14. On 3/14/2012, I spoke via telephone with Jerome County Deputy Rick Ustick. I told Ustick that I had a sworn affidavit from C.J. Nemeth, a previous investigator in this matter, dated August 27th, 2008. In the Affidavit Nemeth speaks of a conversation she had with Ustick in which he told her that at the time of the Murder he was a reserve officer for the Sheriff's Department in Jerome, and that he was currently (at that time) a full time sworn deputy for Jerome County.

In her affidavit, Nemeth stated that Ustick told her that he still had in his possession original documents and notes related to the Charboneau Murder case. She stated that he told her that since was a sworn full time Deputy he would require a subpoena to discuss the matter or disclose the items in his possession. Deputy Ustick told me that was not a true statement. He told me that he never had or presently had any documents, notes or any other item concerning that murder case in his possession. Deputy Ustick told me that he would be willing to swear in court to that

truth. He also told me that he had know C.J. personally and that he didn't wish to call her a liar but that she was not known for always being totally truthful. I have attached a copy of that affidavit for the court to review.

15. On 3/15/2012, I spoke with Jerome County Sheriff's Detective Rick Cowen concerning the missing files. Det. Cowen told me that he had never seen any of the documents relating to the Murder case since his employment with the Sheriff's Department. Det. Cowen told me that on orders from Capt. Johnson, he had done all he could to try and locate the documents or find any person current or past that may know something about them. He told me that the only person that he spoke with who had seen the files was former Sheriff Larry Webb. Webb told him that all the documents were in the file cabinet when he left office and turned it over to newly elected Sheriff, Larry Gold. Detective Cowen assured me that he would continue to look for the files and that if he did locate them he promised me that he would notify Judge Elgee if they were found.

Your affiant firmly believes that I have been obstructed with obtaining the records that we have a judge's order to obtain. Those agencies that have either outright obstructed or were advised not to assist me, they are the Jerome County Prosecutors Office, Jerome County Sheriff's office, Idaho Department of Corrections, and the Idaho State Attorney General's Office,. (as far as I can tell at this Point, the Sheriff's department is acting on its letter from the Prosecutor not to assist me anyway. I am not sure as to how that may relate to the missing files.) A number of individuals have also refused to help as well, such as Mr. Alonzo.

Your affiant is providing this information as a way of updating the Court with the progress of my investigation as outlined in a previous affidavit filed with the court.

DATED this the 20<sup>th</sup> day of March, 2012

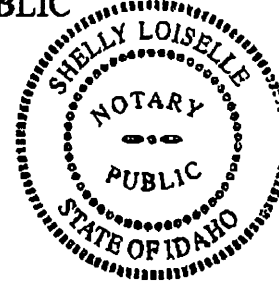
Tom Benz  
Signature of Affiant

SWORN to subscribed before me, this 20 day March, 2012

Shelly Loisel  
NOTARY PUBLIC

My Commission Expires:

Aug. 26, 2016



*COPY*  
*Tanner*

## FOR THE DISTRICT COURT OF THE

## STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO

Plaintiff.

)

)

) Case No.

vs.

)

AFFIDAVIT OF SWORN

JAIMI D. CHARBONEAU,

STATEMENT OF C.J NEMETH

Defendant.

)

)

STATE OF IDAHO )

ss.

County of Elmore )

CJ NEMETH, being first duly sworn, deposes and states as follows:

I am over the age of eighteen (18) years, that I am not a party to the action or related to any of the parties in the above entitled action and that I was employed by the Jerome County Sheriff's office from 1990-1993.

I am a Private contracted investigator and I have worked on Several Criminal cases (Murder cases), and a case to which I was working on reminded me of a similar case which being the State of Idaho vs: Jaimi Charboneau case. It was by chance that I saw a family member around the first part of August 2008. I relayed a message to have Jaimis Mother contact me. I was then later hired by the family to look into the case based on the information of Possible New Evidence and information that was never disclosed during the Trial. The following information obtained: I CJ Nemeth contacted Rick Ustick a Jerome County Reserve Deputy who has been employed since 1984 to the present with the

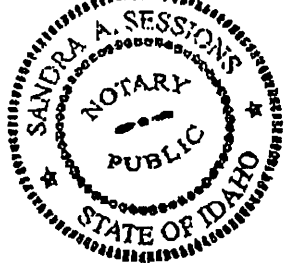
AFFIDAVIT OF SWORN STATEMENT - Page I

Copy  
Tanner

Jerome County Sheriff's Department I CJ Nemeth advised Mr. Ustick that I was attempting to gather information on the Jaimi Charboneau case, relating to information about guns in the case that was possibly missing and later found by a Janitor that was hidden in the attic of the Jerome County Court House. Mr. Ustick stated he had no knowledge and never heard anything to that fact and that he could not talk with me if, as he was a sworn peace officer and Since he still has in his possession. original documents and notes relating to this case. that he would have to be subpoenaed in order to discuss the case with anyone and only then would he be willing to give out the information relating to this case. It was also later discovered that all records pertaining to the Charboneau case no longer exists or any documents relating to this case are in the possession of the Jerome County Sheriff office, or Court house or the Appellate Court. The Information, original notes documents that are in the possession of Mr. Ustick may be important to this case and may contain the information needed for any errors that may have occurred during the trial.

*CJ Nemeth*  
CJ NEMETH

SUBSCRIBED AND SWORN To before me this 27<sup>th</sup> day of August, 2008



*Sandra A. Sessions*  
Notary Public for Idaho  
Residing at: *Mountain Home*  
My Commission Expires: *6.6.11*



COURT MINUTES

CV-2011-0000638

Jaimi Charboneau vs. State of Idaho

Hearing type: Mot. For permission to Appeal interlocutory Order

Hearing date: 4/2/2012

Time: 11:00 am

Judge: Robert J. Elgee

Courtroom: District Courtroom-judicial Bldg

Court reporter: Susan Israel

Minutes Clerk: Crystal Rigby

Tape Number: DC

Defense Attorney: Brian Tanner

Prosecutor: Mike Seib

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 APR 6 PM 12 43

*Michelle Emerson*

CLERK  
BY *[Signature]*

DEPUTY CLERK

11.04 Counsel present by phone.

Court introduces the case

State addresses the Motion for Permission for an Interlocutory Appeal, cites case law. Because of the age of the case and how long the Def. has been in prison, doesn't believe the parties would be prejudiced. Believes the case will be appealed regardless.

11.10 Mr. Tanner responds, doesn't know if there is a controlling question of law to make grounds for an appeal. Doesn't know why the appeal needs to happen now rather than down the road at the conclusion of the case.

11.12 State responds.

11.16 Court comments, sees this case as a fact driven inquiry not a controlling question of law. There is no since of having two appeals, one at the beginning and one at the end. Denies Motion for Interlocutory Appeal. Mr. Tanner is to prepare an order. Court inquires about a motion to return a letter.

Mr. Tanner comments

State has no objection

Court enters order

11.23 State comments about the order needing to be entered within 14 days.

Court has the State prepare the order

11.25 Recess

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 APR 6 PM 12 43

*Michelle Emerson*

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

ORDER TO RETURN TO COUNSEL FOR  
PETITIONER, THE ORIGINAL HAND  
WRITTEN NOTE FROM DEWAYNE  
SHEDD

The Court, having considered the Petitioner's Motion to Return the original handwritten note from Dewayne Shedd, identified as Exhibit B in the Petitioner's Amended Petition for Post Conviction Relief, and having found good cause therein, it is hereby ordered that this note be delivered to counsel of record in a sealed envelope. The note shall be returned to the Court after a handwriting analysis has been conducted.

Dated This 2 day of <sup>April</sup>~~March~~, 2012

*Robert E. Elger*  
Honorable Judge

*Robert E. Elger*



**CERTIFICATE OF MAILING**

I do hereby certify that a full, true and correct copy of the foregoing **ORDER TO RETURN TO COUNSEL FOR PETITIONER, THE ORIGINAL HAND WRITTEN NOTE FROM DEWAYNE SHEDD** was mailed to:

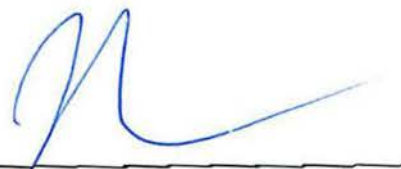
Brian M. Tanner  
137 Gooding Street West  
Twin Falls, ID 83301

( ) Facsimile  
(☒) U.S. Mail  
( ) Certified Mail  
( ) Hand Delivered

Jerome County Prosecutor  
John L. Horgan  
233 W. Main Street  
Jerome, ID 83338

( ) Facsimile  
( ) U.S. Mail  
( ) Certified Mail  
(☒) Hand Delivered

DATED this 9<sup>th</sup> day of April, 2012.

  
\_\_\_\_\_  
Deputy Clerk



JOHN L. HORGAN  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, ID 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB #3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed APR 09 2012

*Michelle Emerson*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI D. CHARBONEAU,

Petitioner,

vs.

STATE OF IDAHO

Respondent.

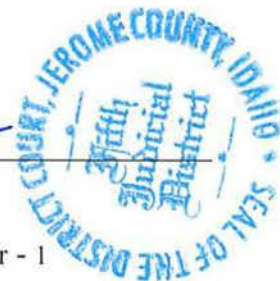
Case No. CV-2011-638

ORDER DENYING MOTION  
FOR PERMISSION TO APPEAL  
FROM AN INTERLOCUTORY  
ORDER

This matter having come before the Court by way of telephonic hearing, upon the Respondent's *Motion For Permission To Appeal From An Interlocutory Order* (filed March 9, 2012), and the Court having examined its prior order that regarded the denial of the Respondent's motion for summary dismissal (the order at issue here and that which the Respondent seeks permission to appeal), and the Court, having heard and considered the parties arguments on the matter, does hereby DENY, for the reasons stated on the record and in open court, the Respondent's *Motion For Permission To Appeal From An Interlocutory Order*.

DATED this 4 day of April 2012.

*Robert J. Horgan*  
Judge



Order Denying Motion For Permission To Appeal From An Interlocutory Order - 1

CERTIFICATE OF SERVICE


I hereby certify that on this 9<sup>th</sup> day of April 2012 I served a true and correct copy of the within and foregoing *Order Denying Motion For Permission To Appeal From An Interlocutory Order* upon the person(s) named below by and in the manner indicated:

Michael J. Seib  
Jerome County Prosecutor  
233 West Main  
Jerome, ID 83338

☒ personal delivery  
☐ U.S. Mail  
☐ telephone facsimile

Brian Tanner  
137 Gooding St. West  
Twin Falls, ID 83301

☐ personal delivery  
☒ U.S. Mail  
☐ telephone facsimile

  
\_\_\_\_\_  
Deputy Clerk

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Phone: 208.735.5158  
Fax: 208.734.2383  
ISB #7450

Attorney for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2012 MAY 9 AM 9 15

Michelle Emerson

BY   
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

JAIMI DEAN CHARBONEAU, )

Petitioner, )

v. )

Case No. CV-2011-638

THE STATE OF IDAHO, )

Respondent. )

**SUPPLEMENTAL RESPONSE TO  
STATE'S MOTION FOR  
PERMISSIVE APPEAL**

COMES NOW the above-named Petitioner, by and through his attorney of record, BRIAN TANNER, and hereby provides a supplemental response to the State's MOTION FOR PERMISSIVE APPEAL ("MOTION") as follows.

PROCEDURAL HISTORY

The State filed a MOTION FOR PERMISSIVE APPEAL with the District Court. The motion was denied. The Attorney General for the State of Idaho subsequently filed a Motion for Permissive Appeal with the Idaho Supreme Court pursuant to Idaho Appellate Rule 12(a) and the Petitioner filed a response to the Idaho Supreme Court. The Petitioner attempted to supplement his RESPONSE TO MOTION FOR PERMISSIVE APPEAL, filed with the Idaho Supreme

Court, by submitting handwriting analysis which confirms the authenticity of both the Tira Arbaugh letter and the handwritten letter from Dewayne Shedd. The Attorney General's Office filed a MOTION TO STRIKE SUPPLEMENTAL RESPONSE TO STATE'S MOTION FOR PERMISSIVE APPEAL AND STATEMENT IN SUPPORT THEREOF. The basis for the motion is that the Idaho Supreme Court should not consider evidence not presented to the trial court pursuant to Idaho Appellate Rule 30(a). The handwriting analysis was not presented to the District Court prior to the District Court's decision in denying the State's MOTION FOR PERMISSIVE APPEAL. The Petitioner is now presenting to the District Court evidence of the authenticity of the Tira Arbaugh letter and the handwritten note from Dewayne Shedd.

#### ISSUE

The sole issue involved in the STATE'S MOTION FOR PERMISSIVE APPEAL is whether or not the seven page hand written letter from Tira Arbaugh constitutes hearsay and should therefore not be considered by the District Court.

The Petitioner argues that the Tira Arbaugh letter should be considered by the District Court because her statement falls within an exception to the hearsay rule. That exception is I.R.E. 804(b)(3) – a statement against interest. The statement (letter) exposes the declarant (Arbaugh) to potential criminal charges which would be perjury and obstruction of justice as a co-conspirator. A reasonable person in Tira Arbaugh's position would not have made these statements unless she believed them to be true.

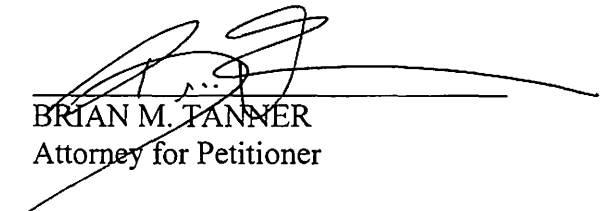
Under this evidentiary Rule, there may be a corroboration requirement, as the statements in the letter tend to expose Tira to criminal liability and are offered to indirectly exculpate Petitioner. This corroboration requirement generally applies to a third-party confessor (see *State v. Meister*, 148 Idaho 236, 200 P.3d 1055 (2009)).



In order to corroborate the letter and prove its authenticity, the Petitioner provides to the District Court, expert handwriting analysis of both the letter from Tira Arbaugh and the handwritten note from Dewayne Shedd (Exhibit B of the Amended Petition).

The analysis was conducted by Lynn Terry, who is a certified Question Document Examiner. His analysis regarding the letter from Tira Arbaugh is attached as *Exhibit A*. His analysis with regards to the handwritten note from Dewayne Shedd is attached as *Exhibit B*. His qualifications are attached as *Exhibit C*. Mr. Terry, after extensive review and comparative analysis of both the Tira Arbaugh letter and the handwritten note from Dewayne Shedd, has concluded that both the letter and the note are authentic to a high degree of probability.

Respectfully Submitted This 9<sup>th</sup> day of May, 2012.



BRIAN M. TANNER  
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Brian Tanner, hereby certify that on the 8<sup>th</sup> day of May, 2012, I caused a true and correct copy of the foregoing Petitioner's Supplemental Response to Motion for Permissive Appeal, to be served to the following persons as follows:

Michael Seib  
Jerome County Prosecuting Attorney's Office  
233 West Main Street  
Jerome, Idaho 83338

( ) U.S. Mail  
(☒) Hand delivered  
( ) Faxed  
( ) Court Folder

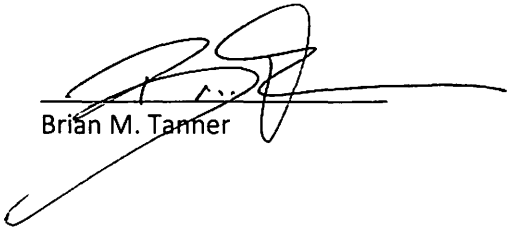
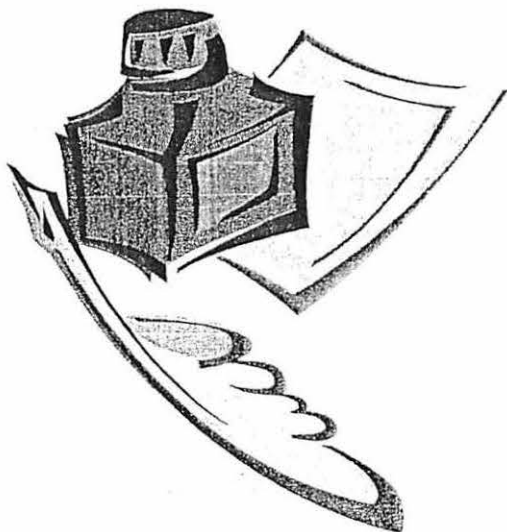
  
\_\_\_\_\_  
Brian M. Tanner

EXHIBIT A



Lynn Terry  
Questioned Document Examiner  
5220 E. Softwood Drive  
Boise, Idaho 83716  
Telephone (208)385-0393

Brian M. Tanner  
Attorney at Law  
137 Gooding Street West  
Twin Falls, Idaho 83301  
Telephone (208)735-5158

Re: Tira Arbaugh (Halman)

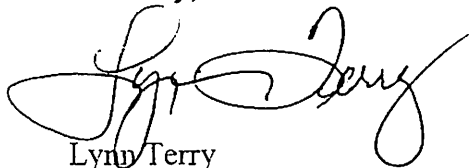
Dear Mr. Tanner:

This is a summary of findings in reference to a questioned document given to me for analysis. Overview of the situation is as follows. The examination was requested by the law office of Brian Tanner of Twin Falls, Idaho. Mr. Tanner requested that I examine a seven page document that was signed "Tira Arbaugh Halman dated September 6, 1989." Mr. Tanner also supplied me with know writing samples of Tira Arbaugh Halman (Hallman). The questioned document was to be compared against the know writing of Tira Arbaugh Halman (Hallman) for common authorship.

The seven page document in question is a photo copy of a letter to Judge Becker. The photocopied letter is written in cursive and showed a signature of "Tira Arbaugh Halman dated September 6, 1989." The document in question was marked Q-1 through Q-7 for purposes of identification. The known writing of Tira Arbaugh Hallman consisted of a three page photocopied statement which was dated July 1, 1984 signed by Tira Arbaugh Halman (Hallman,) which was marked as K-1 through K-3 for purposes of identification. A second document representing the know writing of Tira Arbaugh Halman was three photocopied baby book pages which showed writing that is describing different questions of the author as well as detailed information of a new born. This three page document was marked K-3 through K-6 representing the known writing of Tira Arbaugh Halman.

The known documents that have been identified above were compared against the questioned document. It is this document examiners opinion that there is a high degree of probability that the author of Q-1 through Q-6 is common to documents marked K-1 through K-6. There are common and consistent letter formations within the interior letter construction that are within the author's range of writing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynn Terry". The signature is fluid and stylized, with the first and last names being more prominent.

Lynn Terry  
Question Document Examiner

Enclosure

4-28-18  
4-28-18  
4-28-18

Dear Judge Becker,

Since I am writing this letter to you because I believe you should know the truth about some of the things that happened the day my mom died & the truth about some of the things that I was told to say & told not to say. I believe my mom would want me to tell the truth about these things. None of this is easy for me because I loved mom. She was my best friend & I feel lost & alone without her.

I am not sure if I am supposed to be writing you like this with you being in charge of the court proceedings with Jamil & my mom being shot is just that I keep having bad dreams about all of this & I can't talk to anyone about this, even my sister. Everybody I know seems to be mad all the time. To know that they are all still very mad at Jamil & they all tell me I should only do & say what the prosecutor & Mr. Carr tell me to do. But I believe you should know that some of the things in my statements to & from



police were not all true.

On the day that this all happened I was pretty shook up because my mom had just been shot & because there were so many people asking me too many questions.

When I wrote out my statement on the day it happened I was told by an officer I think his name is Driesal to only say certain things so that my statement wouldn't be confusing. I do not recall everything that I said in my statement that day but I do remember that officer Driesal told me to say certain things that were not really true. One thing I remember is when I wrote down the time that I woke up that morning. Officer Driesal told me to write down a specific time which I knew was not true because I did not know what time it was when I woke up. I have never been like me to look at the clock when I wake up. I just wrote down what officer Driesal told me to say.

Also I remember that Ray is the one who said something about the horses what I said.

officer Druasal is that after mom woke up that morning I remember her asking Jamie to go out & check on our horse that had been to the vet a few days earlier.

Before going outside I remember that Jamie tied a new white wildrag around my neck & he kissed my forehead & he told me that the wrangle horse was waiting on me. Jamie would always tell me that when I would oversleep.

Before Jamie went outside to check on the horse mom came back to my bedroom & gave me a big box wrapped in decorative paper. When I opened the box it had a new 22 rifle in it. That was my graduation gift from mom & Jamie. After I told them thank you Jamie went outside & mom went into the bathroom to take a bath. After mom got dressed she told Tif & me that she was going outside to help Jamie with the horses.

I remember telling Officer Druasal that when Tif & I first heard mom screaming I could hear his yellies from T.I. at



that time I was still in the bath tub. It was just a few seconds later when we heard the gunshots. That's when Tiffi came running in the bathroom & she screamed at me to get out of the tub & get my clothes on. When I had gotten dressed Tiffi grabbed my new .22 rifle that mom & Jamie had just given to me that morning. Tiffi gave me one of mom's .25 pistols & then she took me outside with her. When we got outside I followed Tiffi over behind the sheep wagon which was right across the driveway from the barn. We could see mom in the alleyway by the feed bins but I did not see Jamie. I could only hear his voice. I remember I heard Tiffi shoot the rifle while we were behind the sheep wagon. I remember this because it startled me so much that I accidentally fired mom's pistol which also scared me. After that I asked Tiffi what was going on. That's when she told me mom had taken Calamity Jane with her when she went outside to help Jamie with the horses. Calamity Jane is what we call



1872  
85  
moms 22 rifles when I told this to officer Driesal that day he told me he would make a note of it but he told me it wasn't necessary to state every little thing in my statement.

I also remember that when I finished my statement that day Officer Larry Wehl came to see us at grandpas house a few days later when he told me that he needed to talk to me again because he said I had forgotten to write down some important things in my statement. Officer Wehl told me that I had forgotten to put down the part about hearing more shots that day after Riffie & I had went back into the house. Officer Wehl told me to write out another statement saying I had heard 6 or 8 more shots while Riffie & I were in the house changing our clothes. I remember I had to sign another statement when Officer Wehl told me to write that down even though I knew it was not true.

One other thing that bothers me is something Marc Haas the new prosecutor from Boise had told us to do. Mr. Haas has



4-15-12  
all  
A-6

that we need to get rid of  
moms Calamity Jane rifle. I dont  
understand why he would want  
us to do that but grandpa + me  
+ uncle Jimmy we all went out  
to the el rancho property last  
week + we buried moms rifle  
out there behind the potato  
cellar where we used to feed the  
horses. Uncle Jimmy wrapped  
moms rifle in an old blanket  
+ buried right behind the cellar  
just a few feet from the place  
where he had thrown some of  
moms other things in the crawl  
space at the back of the potato  
cellar a few weeks after the day  
my mom died.

That's the stuff we told  
Duane Brown + officer Orvil about  
last then. Everybody told me not  
to say anything about Uncle Jimmy  
throwing those things away in the  
crawl space. But Mr. Becker I know  
that this is not right + I hope that  
I am doing the right thing by  
telling you these things.

Can you please call or write  
to my grandpa + talk to him  
about this stuff? Because I know  
he is a good man + if he is doing  
nothing bad or

460 of 956

because he is so mad at  
 Jamie for what happened to  
 my mom

Jina Anbraugh  
 Halman  
 September 6, 1999

Mr. Becker,

I am in Bruneau Idaho for  
 a cowboy benefit & street dance  
 where Pinto Bennetts band is providing  
 the music. Pinto Bennett knew my  
 mom, & me & Tif for a long time  
 ever since we lived at Smiths  
 Prairie. I talked with Pinto about  
 the things I have told you in  
 this letter & he is the one that  
 convinced me to write you.

Mr. Becker I am 19 years old now  
 & I need to tell you the truth about  
 the things in this letter. If you  
 need to talk with me about these things  
 you can reach me at 224-4070. That's  
 my grandpas phone number. I will be  
 back in Jerome early next week.

My Aunt Margene, mom's sister can  
 also tell you about this stuff because  
 she was also there when Mr. Haus told  
 Uncle Jimmy & grandpa & all of us to  
 get rid of mom's will.



3/16/70

Date July 13<sup>th</sup> 1984 Page No. 1

STATEMENT OF:

I woke up this morning about 11:00 this morning mom woke me up. She kisses + I woke up. She had brought me home some Western Horse Magazine + she took a bath. As soon as she got out I got in. I was reading the magazine in the bathtub + I heard mom scream and I heard a bunch of bustling out of the door. About 10 min before I heard her scream she had come in the house and asked us if we had let the noises into the other rooms + then she went outside. After I heard her scream Tif came into the bathroom + screamed for me to get out of the bathtub + get dressed. She had already called the police. I got dressed + ran outside. Tif told me to stay behind sheep wagon. I could hear Jamie in the barn very little. Then I ran back into the house + changed clothes while Tif hid the keys to the truck. We ran back outside.

EXHIBIT "J"

Tina Arbaugh

STATEMENT OF:

And waited for Jamie to  
come when Tip ran into the ally  
of the barn to mom. I got there  
right after Tip + Tip had mom  
in her arms. She pulled back her  
shirt + she had about 4 or 5 bullet  
holes in her chest. She was bleeding  
from her mouth + nose. I touched  
her cheek + then ran out of the  
barn to call the police. I could hear  
Tip crying + screaming. By the  
time I got through to the police  
I was too shaken up to talk + hung  
up. I ran outside and Officer  
Gressal was up the lane. As soon  
as I saw him I ran to the phone  
and called Mike Johnson + then Mary  
+ Jim Culbough. Then I ran back  
to mom.

T.R.A.

T.R.A.

T.R.A.

T.R.A.

Dina Culbough  
Hallman

OF;

4-12-12  
R

While we were dressing we  
saw about 5 more spots.

T.R.A.

T.R.A.

T.R.A.

T.R.A.

Lisa Allbaugh  
Halman

President of the U.S.A. President Bill Clinton

Most popular singers Jim Mcgraw

Mom and Dad's favorite album Counting Crows

Songs at the top of the charts Jim Mcgraw - Not a moment to soon

Latest dance craze Country Line Dancing

Best movies Legends of the Fall

Popular movie stars Brad Pitt

Popular t.v. shows Chicago Hope

Best selling books

Fashion trends Gangster clothes + Western

Popular exercises Mt. Biking + Outdoorsports

Sports heroes Chicel O'neil

Popular cars and prices Grand-Am \$15,500<sup>00</sup> + Chevy Truck \$24,000<sup>00</sup>

Some prices today

One dozen eggs \$1.09 doz.

One loaf of bread 99¢

One quart of milk \$1.25 \$2.25 gal

One cup of coffee 50¢

Cost of movie in theater \$5.50 per person

One record album \$8.00 \$15.00 tapes





When and where labor began At Home

We left for the hospital at 2:30 pm a.m./p.m.

Name and location of the hospital St. Benedict's

Jerome, Idaho

The labor lasted 17 1/2 hours

Delivery lasted 10 min.

Who delivered the baby Dr. Lorain Jansen

Nurses attending Sister Janet + Linda

Special memories After a very long labor I

couldn't wait to see you so I pushed you out

fast. You were blue, Daddy cut the cord

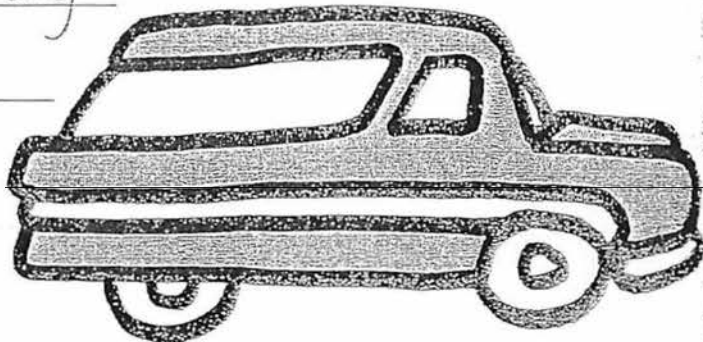
While Grandma Griggs + Aunt Liffi watched.

Daddy was so proud of you he wouldn't

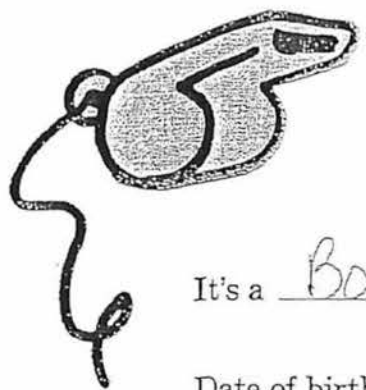
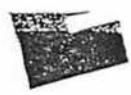
hardly put you down long

enough for the nurse to  
look after you.

Stationwagon



K6  
4-5-04  
P



It's a Boy

Date of birth [REDACTED]

Time of birth 7:44 am

Weight 7 lbs 1 oz. Length 20 inches

Color of eyes Blue Color of hair Black

Blood type \_\_\_\_\_ Diagnosis \_\_\_\_\_

Rh Factor \_\_\_\_\_

Distinguishing characteristics He has his  
daddy's cleft chin, and looks  
a lot like his sister Kadli



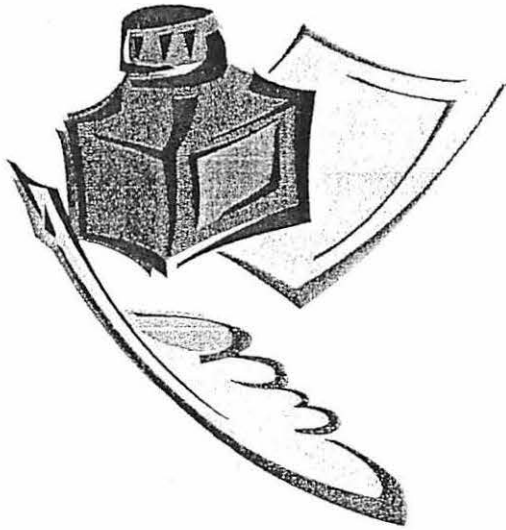
TB - 10-13-2011

Franklinbaugh  
622 Highland Rd  
Jerome, Idaho  
83338



Mr. Philip Becker  
Jerome County Judge  
300 North Lincoln  
Jerome, Idaho  
83338

## EXHIBIT B



Lynn Terry  
Questioned Document Examiner  
5220 E. Softwood Drive  
Boise, Idaho 83716  
Telephone (208)385-0393

Brian M. Tanner  
Attorney at Law  
137 Gooding Street West  
Twin Falls, Idaho 83301  
Telephone (208)735-5158

Re: A Dewayne Shedd

Dear Mr. Tanner:

This is a summary of findings in reference to a questioned document given to me for analysis. Overview of the situation is as follows. The examination was requested by the law office of Brian Tanner of Twin Falls, Idaho. Mr. Tanner requested that I examine a hand written note which showed a signature of "A. Dewayne Shedd" dated, "6/27/03." Mr. Tanner also supplied me with known samples of Mr. Shedd's writing. Mr. Tanner requested that I compare the know writing of Mr. Shedd against the questioned document for common authorship.

The questioned document that I received was a note written in a combination of block lettering and cursive, in pencil, signed by "A. Dewayne Shedd" dated "6/27/03." The document was marked Q-1 for purposes of identification. The known documents that were used in comparison were marked K-1 through K-10. They are described as follows:

K-1 The last page of an affidavit of Michael G. Blanchard notarized by A. Dewayne Shedd dated April 29, 2003.

K-2 The last page of an affidavit of Eugene Louviers notarized by A. Dewayne Shedd dated April 24, 2003.

K-3 The last page of an affidavit of Eugene Louviers notarized by A. Dewayne Shedd dated May 21, 2003.

K-4 The last page of an affidavit of Rodney Pylican notarized by A. Dewayne Shedd dated April 16, 2003.

K-5 The last page of an affidavit of Jay James Hunter notarized by A. Dewayne Shedd dated May 21, 2003.

K-6 The last page of an affidavit of Edward Chavez notarized by A. Dewayne Shedd dated April 11, 2003.

K-7 A Field Memorandum from the Department of Corrections with an inmate name of Jaimi Dean Charboneau signed by A Dewayne Shedd dated January 30, 2003.

K-8 A Field Memorandum from the Department of Corrections with an inmate name of Jaimi Dean Charboneau signed by A Dewayne Shedd dated April 22, 2003.


K-9 Idaho Department of Corrections Offender Concern Form in the name of Jaimi Dean Charboneau signed by A Dewayne Shedd dated May 4, 2005.

K-10 State of Idaho-Board of Correction Access to Courts Request in the name of Jaimi Charboneau signed by A Dewayne Shedd dated May 5, 2003.

Note: The above listed known documents contained represented writing or signature of A Dewayne Shedd. All the documents were photocopies.

The known documents that have been identified above were compared against the questioned document. It is this document examiners opinion that there is a high degree of probability that the author of Q-1 through Q-6 is common to documents marked K-1 through K-10. There are common and consistent letter formations within the interior letter construction that are within the author's range of writing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynn Terry".

Lynn Terry  
Question Document Examiner

Enclosure

4-18/2  
4

ter. Tim McNeese from the REC office / instructed  
to monitor this of inmate CHARLONER is  
personal / legal MAIL. At morning. Are outgoing  
legal MAIL. If A letter arrives at 2:00 PM  
from Larry Gold, A former Sheriff  
of Jerome County, seize it without notifying  
Charloner, look for any documents depicting  
the name Tim Houghton, confiscate any such  
documents and notify McNeese immediately.  
If McNeese is not available then contact  
another Attorney Mark Haws at the  
Federal Court Building in Boise. His phone  
number and address is in the directory on  
my desk. Notified Lt. Unger and he agreed  
to help monitor Charloner's mail.

A. D. Ware

6/27/03

Item # 4  
TB  
10-4-11

3. That I was attending a therapeutic community class at the friends program at the Idaho Correctional Institution in Orofino in early December, 2002, it was at this approximate time when I personally witnessed "Joe Klauser"; the Administrator of Operations for the IDOC, and an associate, came on the unit, for what appeared to be a mock tour of the program, it all seemed to be unofficial. And;

4. That I am familiar with inmate Jaimi Dean Charboneau as we have had casual encounters as inmates restrained within the IDOC. I learned personally through inmate Charboneau that he arrived at ICI-O in late November, 2003, just a few weeks prior to Mr. Klauser's unusual tour through the ICI-O facility.

5. That I am also personally aware that inmate Charboneau has experienced retaliatory type treatment by ICI-O staff since "Joe Klauser" made a physical appearance at ICI-O in early December, 2002. Inmate Charboneau personally told me that staff at ICI-O had authorized him to have a pair of special made boots sent in. However, after "Joe Klauser" was here at ICI-O staff told inmate Charboneau that they had changed their minds and they made him send the boots out. I am also aware of the incident when correctional staff at ICI-O confiscated inmate Charboneau's legal materials from his cell on unit A-2, I am aware of that incident because I was housed on A-2 myself when that incident occurred.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 29<sup>th</sup> day of April, 2003.

Subscribed to and sworn before me this 29 day of April, 2003.

Michael G. Blanchard  
Michael G. Blanchard/Affiant  
#57654

A. Duane Shel  
NOTARY PUBLIC FOR IDAHO

My Commission Expires: 11/06/07



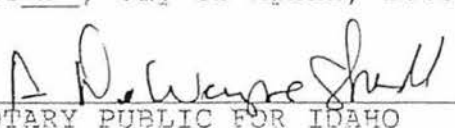
9. That when I returned to my cell after speaking with C/O Thomas and C/O Alberts I asked inmate Charboneau if he had had a piece of cardboard under his television. Inmate Charboneau confirmed that he did have a small piece of cardboard placed under his television. At that point inmate Charboneau looked under his television and discovered that the piece of cardboard was missing. I then told inmate Charboneau that C/O Alberts had told me that he had confiscated the piece of cardboard which had been under his television. I can personally assert that it is common for inmates to have a small piece of cardboard or an extra towel placed underneath their televisions due to the fact that the metal shelves which the televisions sit on tend to become magnetized by the television which then causes the color to be drained from the television. I was surprised to learn that inmate Charboneau had had a piece of cardboard under his television because I had not noticed it. What I find even more peculiar is the fact that I had a piece of cardboard exposed in a conspicuous manner on my locker which was not confiscated during the search. The fact that this search was obviously directed at inmate Charboneau clearly indicates that the search was motivated over the fact that inmate Charboneau currently has legal action pending against prison officials.

FURTHER YOUR AFFIANT SAYETH NAUGHT.  
Dated this 24, day of April, 2003.

  
Eugene Louviers/Affiant #39833

Subscribed to and sworn before me this 24, day of April, 2003.



  
NOTARY PUBLIC FOR IDAHO

My Commission Expires: 11/06/07

(287)




12. That after my encounter with Sgt. Christensen I was under a great deal of apprehension not knowing what he might be up to and what he has shown he is capable of, I decided to allay my fears by approaching another correctional officer, Sgt. Townsend" who has always been fair and honest in all of my dealings with her. I explained to "Sgt. Townsend" how Sgt. Christensen had confronted me and wanted me to discuss something with him. I told "Sgt. Townsend" that I was apprehensive about discussing anything with Sgt. Christensen due to my past experiences with him. Sgt. Townsend told me to just be respectful to Sgt. Christensen and if I thought that he was asking something which I thought was inappropriate or something which I could not answer that I should just tell him that. I also asked "Sgt. Townsend" if I could have a staff representative or mediator present if Sgt. Christensen wanted me to discuss anything with him. Sgt. Townsend told me that I could request a staff representative.

Since my discussion with officer Amy Anderson and, Sgt. Townsend, Sgt. Christensen has not bothered me.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 21, day of May, 2003.

  
Eugene Louviers, 32933  
Affiant

Subscribed to and sworn before me this 21, day of May, 2003.



Commission Expires: 11/06/07

AFFIDAVIT OF EUGENE LOUVIERS--6

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 16, day of April, 2003.

Rodney Pylican  
Rodney Pylican/Affiant

Subscribed to and sworn before me this 16, day of April, 2003.

A. Delwara Shukh  
NOTARY PUBLIC FOR IDAHO  
NOTARY PUBLIC  
STATE OF IDAHO  
Commission Expires: 11/06/07  
279

In addition, when staff at ICI-0 locked A-block down on or/about the 5th, day of March, to conduct this cell by cell search, it was clearly only a frivolous or surface search. The officers who entered my cell were only there for two or three minutes and they only disturbed a small portion of my property.

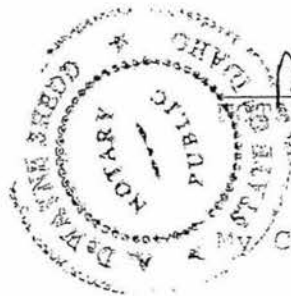
Based on the foregoing factual information it is my opinion that the search conducted by correction officers on or/about the 5th, day of March, 2003 was just a cover up exercise.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 21, day of MAY, 2003.

Jay Hunter 32405  
Jay James Hunter, "  
Affiant

Subscribed to and sworn before me this 21 day of MAY 2003.



Delores J. Hunter  
NOTARY PUBLIC FOR IDAHO

My Commission Expires: 11/05/07


AFFIDAVIT OF JAY JAMES HUNTER-4

7. That on or/about February 26, 2003, while I was returning from a scheduled class I walked up the B-2 unit stairway and passed through the doorway when I noticed sergeant Barnes, and legal aid Dewayne Shedd standing there together talking. I then personally heard legal aid Shedd ask Sgt. Barnes if he had any knowledge about inmate Charboneau's missing legal materials.

I then personally heard Sgt. Barnes admit that he had been in inmate Charboneau's room. Sgt. Barnes also stated that he was not able to take it all because it was too heavy. At that point he, Sgt. Barnes and, legal aid Shedd walked out of the unit through the side door to the school. As they were leaving I personally heard legal aid Shedd tell Sgt. Barnes that he did not want to say anything else right then because he said there were too many people around and that he would discuss the matter with him later.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 11, day of April, 2003.

  
Edward Chavez #61269  
Edward Chavez, #61269  
Affiant


Subscribed to and sworn before me this 11, day of April, 2003.



D. A. Shedd  
NOTARY PUBLIC FOR IDAHO

MY COMMISSION EXPIRES: 11/06/07

(276)

|  |                 |                            |
|--|-----------------|----------------------------|
| DEPARTMENT<br>OF<br>CORRECTIONS<br><br> | SECTION NUMBER: | PAGE NUMBER:               |
|  | III.316.03.1    | 5 of 5                     |
| SUBJECT:   |                 | adopted: 12/90<br>revised: |
| FIELD<br>MEMORANDUM<br><br>ICI-O OFFENDER<br>GRIEVANCE PROCESS   |                 |                            |

### INMATE CONCERN AND INFORMAL RESOLUTION

Inmate Name: Charboneau, Jaime Dean Number: 22091  
 Housing Block and Cell: ICI-O — A-2 / 120-B Date: 1-28-03  
 To: Dewayne Shedd, paralegal at ICI-O

Issue/Concern: Mr. Shedd, on 1-28-03 at approximately 8:00 AM  
I went to pick up legal mail as directed. When you gave me my  
legal mail one of the envelopes had already been opened and  
according to a posted note; which was attached to the opened  
envelope, the contents had been read by the person who opened it.  
I say this because you read the message on that posted note out-  
loud and you were speaking in the direction of my right ear.  
Will you please provide me with a copy of that posted note?  
If not, please return it as I consider it evidence. Also  
will you please provide me the address for both the local  
and, the Idaho State police for this area.

Thank you,

Jaime D. Charboneau  
 Signature

Reply: The posted note I took off your  
envelope was a personal note to me.

P. Holman Shaw  
 Signature/Title

1/30/03  
 Date



DEPARTMENT  
OF  
CORRECTIONS



FIELD  
MEMORANDUM

SECTION NUMBER :

III.316.03.1

PAGE NUMBER :

5 of 5

SUBJECT :

ICI-O OFFENDER  
GRIEVANCE PROCESS

adopted: 12/90  
revised:

INMATE CONCERN AND INFORMAL RESOLUTION

Inmate Name: Charboneau, Jaimi Dean Number: 22091  
Housing Block and Cell: 1C1-O, A-2/120-B Date: 4-21-03  
To: Dewayne Shedd, paralegal approx. 4:00 p.m.  
Issue/Concern :

Mr. Shedd, I am addressing this inmate concern to you because when my legal materials were confiscated by staff before you told me to bring such matters to your attention as soon as possible.

What happened is, today at the 1:00 p.m. general movement I left the unit and went to the rec-yard, when I returned at the 2:00 p.m. general movement I entered my cell and discovered that my property, including my legal materials had been searched and stolen about. When I inventoried my legal work I discovered that one of my Exhibits had been confiscated. I was not given a confiscation sheet as Policy requires. Do you know anything about this search and confiscation?

I saw Sgt. Christensen in central control, when I returned from the rec-yard at 2:00 p.m.)

Signature

Jaimi D. Charboneau

Reply :

A-Block assured from me that the only thing taken from your cell was a piece of cardboard and a bundle of paper towels. Your cell was not left in a disarray condition.



Signature/Title

A. Dewayne Shedd, Paralegal

Date

4/22/03

480 of 956



*The Hon. Viger's*  
*5/18/05*

*L. Unger*  
*5/4/05*

IDAHO DEPARTMENT OF CORRECTION  
OFFENDER CONCERN FORM

Offender Name: Charboneau, Jaimi Dean IDOC Number: 22091  
Housing Unit: 1C1-0, C-2 / C-15 Date: 5-3-05

To: Mr. D. Shedd, staff paralegal  
Issue/Concern: Mr. Shedd, will you please check the institutional legal mail log to encompass January of this year through April 29, and tell me if those records indicate that legal mail had been sent to me during that time frame from attorney "Greg J. Fuller".  
Mr. Shedd, do you know if a federal attorney named Marc Haws is attempting to interfere with my legal mail?  
Thank you for your assistance in this matter.

Jaimi Dean Charboneau  
Offender Signature

Reply: ~~These~~ The Requested Logs are kept in the Mail Room  
Suggest you contact mail room.

A. Doldano  
Staff Signature

5/4/05  
Date

White - Return to Offender      Yellow - Retain for Institution Files      Pink - Retain by Offender

*Log*  
*4/20/05*



Date Rec'd MAY 05 2003

Appt. Date

Time

Record #

STATE OF IDAHO - BOARD OF CORRECTION  
IDAHO DEPARTMENT OF CORRECTIONS - Operations Division  
ACCESS TO COURTS REQUEST

Name: Charboneau, Jaimi IDOC #: 22091 Housing Assignment: 101-0, A-2/120-B

TYPE OF ACTION: I need Form Packet ☒ Talk to paralegal

Rule 35 Tort Claim Credit for Time Served Photocopies

Post Conviction Power of Attorney Notary

Civil Rights

Habeas Corpus

Appeals

☒ Federal

Federal

Notice of Appeal

Withdrawal of Guilty Plea

State

State

Rider

Probation Revocation

Books to check out -- Please identify which books you want

Post Conviction

Appeal to District Court

Rule 35

Appeal to 9th Circuit

Petition for Review

Petition for Rehearing

Filing deadlines/Court dates

TO GET PRIORITY YOU MUST INDICATE THE DATE/NATURE OF ANY DEADLINES ON EVERY REQUEST. PROOF OF DEADLINE REQUIRED.

Briefly describe your issue: Mr. Shedd I just received an Order from the District Federal Judge presiding over my civil case "Case No. CV01-00014-S-EL". In the court's Order the Judge (continued on separate sheet.)

I do not ☒ have an attorney in this action

Thank you,

I acknowledge that the IDOC Paralegal whose assistance I seek is not an attorney. The Paralegal cannot give legal advice as to the intent or effect of any document. Any such advice should be sought from a licensed attorney.

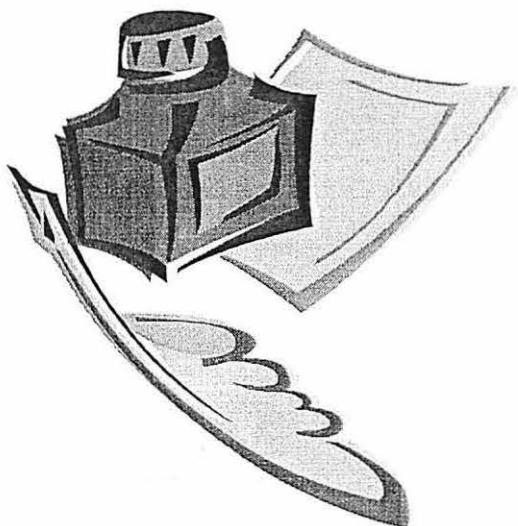
Jaimi S. Charboneau 5-6-03  
Inmate Signature Date

DISAPPROVED If disapproved, reason: Mrs. Altig advised me to have you write her if you wish to resolve this issue

A. Dehorne Shul  
Paralegal

5/5/03  
Date

## EXHIBIT C



Lynn Terry  
Questioned Document Examiner  
5220 E. Softwood Drive  
Boise, Idaho 83716  
Telephone (208)385-0393

Mr. Brian Tanner

An expert witness in the field of document examination, I am a Boise State University graduate with a degree in Criminal Justice Administration completed in 1976. I am currently a retired police officer following 30 years of employment with the Boise Police Department in Boise, Idaho.

Trained by the Boise Police Department's current examiner Detective Sgt. Frank Richardson, my internship lasted two years. The training included assigned reading, individual instruction on actual document examinations, and required schooling outside of the department. I attended schools for document examiners put on by the US Secret Service and the FBI. As a member of SWAFDE (Southwest Association of Forensic Document Examiners) my continuing education included instructional seminars conducted by this organization. I was the sole questioned document examiner for the Boise Police Department. During my tenure at the Boise Police Department I built a laboratory that included: ESDA (Electro Detection Apparatus), a comparison microscope, and an infra-red camera with filters for identifying ink; I compared hundreds of documents for common authorship; and I testified in Ada County Magistrate Court, Ada County District Court, and US Federal Court as an expert witness in the field of document examination. I trained two investigators who later became qualified document examiners.

Sincerely

Lynn Terry

Mr. Brian Tanner

Per our conversation yesterday here is a list of my qualifications as an expert witness in the field of document examination.

You examiner has been employed by the Boise police department for 30 years of now is currently retired.

I was trained by the Boise Police Departments current examiner Detective Sgt Frank Richardson. That internship lasted two years. The training included assigned reading regarding document examination. Individual instruction on actual documents examinations and required schooling outside the department. I attended a school for Document examiners put on by the US Secret Service. I also attended a school for document examiners put on by the FBI. I then joined SWAFDE (Southwest Association of Frensic Document Examiners). I also attended seminars conducted by that orginazation. I then took over the sole role as the questioned document examiner for the Boise Police Department. During my tenure at the Police Department I built a labatory that consisted of an ESDA (Electro Detection Aparatus), a comparison Mirroscope, a infred camera with numerous filters for identifying ink. I compared hundreds of documents for common authorship. I testifyied in Ada county Majursitate Court Ada County District Court and US Federal Court as an expert witness in the field of document examination. I then trained two investigators who later became qualified document examiners.

Sincerely

Lynn Terry

JOHN HORGAN  
Office of the Jerome County Prosecutor  
Jerome County Judicial Annex  
233 West Main  
Jerome, Idaho 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB No. 3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO  
2012 MAY 24 PM 2 00  
Michelle Emerson  
BY \_\_\_\_\_  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                      |   |                                 |
|----------------------|---|---------------------------------|
| JAIMI D. CHARBONEAU, | ) |                                 |
|                      | ) |                                 |
| Petitioner,          | ) | <b>Case No. CV-2011-638</b>     |
|                      | ) |                                 |
| vs.                  | ) | <b>PETITION FOR APPOINTMENT</b> |
|                      | ) | <b>OF SPECIAL PROSECUTOR</b>    |
| STATE OF IDAHO,      | ) |                                 |
|                      | ) |                                 |
| Respondent.          | ) |                                 |
| _____                | ) |                                 |

COMES NOW, John Horgan, Jerome County Prosecuting Attorney, and hereby petitions this Court pursuant to I.C. §31-2603 and I.C. §67-1401(7) for its order appointing the Idaho Attorney General or his designee, as Jerome County Special Prosecuting Attorney to represent the State of Idaho in all Post Conviction proceedings in the above-entitled action.

This motion is based on the allegations in this matter having been provided substance after withstanding summary dismissal; such substance extending back to matters before the trial court and the trial judge, the Honorable Judge Becker. John Horgan was a law clerk for Judge Becker at the time this matter was tried, making Mr. Horgan an extension of the trial court and causing him to have a conflict of interest given his current position.

Given that the Idaho Attorney General's Office has been involved in this matter during other various proceedings, it should now be appointed as conflict prosecutor to handle these current proceedings.

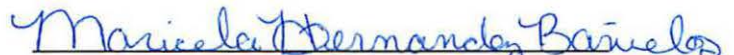
DATED this 24 day of May 2012.

  
\_\_\_\_\_  
John Horgan  
Jerome County Prosecuting Attorney

STATE OF IDAHO                    )  
  ) ss.  
County of Jerome                )

On this 24<sup>th</sup> day of 2012, before me, a Notary Public for Idaho, appeared **John Horgan**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



  
Notary Public for the State of Idaho  
Residing at: Twin Falls, Idaho  
My Commission Expires: 12-19-2017



DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 MAY 29 AM 9 08

*Michelle Emerson*  
CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI D. CHARBONEAU

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2011-638

ORDER FOR APPOINTMENT OF  
SPECIAL PROSECUTOR

IT IS HEREBY ORDERED, AND THIS DOES ORDER, that Lawrence G. Wasden or his delegee, be appointed as Special Prosecutor in the post conviction case of Jaimi Charboneau v. State of Idaho, CV-2011-638, in that he is a suitable person to perform the duties required in representing the State of Idaho in the above-entitled action.

DATED this 25 day of May 2012.

*Lawrence G. Wasden*  
District Court Judge



ORDER FOR APPOINTMENT OF SPECIAL PROSECUTOR (CHARBONEAU)

CERTIFICATE OF MAILING

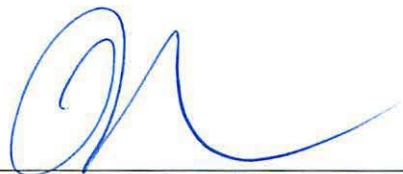
I, the undersigned, hereby certify that on the 29<sup>th</sup> day of May, 2012, a true and correct copy of the foregoing ORDER FOR APPOINTMENT OF SPECIAL PROSECUTOR, was mailed, postage paid, or hand-delivered to:

Jerome County Prosecutor  
233 W Main  
Jerome, ID 83338  
(annex box)

Lawrence G. Wasden  
Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
(mailed)

Brian Tanner  
137 Gooding St. West  
Twin Falls, ID 83301  
(mailed)

By



Traci Brandebourg, Deputy Clerk

Cc: Judge Elgee



BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 JUL 10 PM 2 51

*Michelle Emerson*  
CLERK  
BY  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO COMPEL PRODUCTION OF  
WORK PRIVILEGE DOCUMENTS FROM  
THE IDAHO ATTORNEY GENERAL'S  
OFFICE

The Petitioner, by and through counsel of record, hereby requests a hearing to compel the Idaho Attorney General's Office to produce work privileged documents.

The Idaho Attorney General's Office has allowed an examination of its files related to the Petitioner's First Degree Murder case. However, the AG's office has not allowed examination of work privileged documents, all of which have been catalogued by the AG's office and which are attached as *Exhibit A*. The Petitioner wishes to examine these documents.

The Petitioner filed an application for post conviction relief because valuable exculpatory evidence had been intentionally hidden from him for over twenty years. According to handwritten notes from Dewayne Shedd, who is a paralegal at the Idaho Department of Corrections, the Attorney General's Office, in concert with the Idaho Department of Corrections,

deliberately and carefully concealed documents which directly exculpate the Petitioner in his first degree murder case. This is detailed in the Petitioner's Amended Application for Post Conviction Relief.

In *Paradis v. Arave*, 240 F.3d 1169 (9<sup>th</sup> Cir. 2001), Marc Haws was the subject of a Brady violation for deliberate manipulation of evidence. As a result of his conduct, the first degree murder charge against Paradis was dismissed. The *Paradis* case never would have been resolved had the attorneys not been able to review hand written notes from Marc Haws related to the autopsy investigation.

The letter from Tira Arbaugh states directly and succinctly that evidence was in fact changed, manipulated and concealed in order to pursue a sensible first degree murder case against the Petitioner. The hand written notes from the detectives and the prosecutors will be helpful in determining how the state presented its case and whether or not prosecutors and detectives changed or manipulated evidence as stated by Tira Arbaugh in her letter. The prosecutor's notes might also reveal how or why other gun(s) involved in this case were not presented at trial and instead ended up concealed in the attic of the old Jerome County courthouse. The trial notes may be crucial to a fair understanding of this case and may be important in resolving inconsistencies in the ballistics tests and other evidence presented.

For the following reasons, the Petitioner requests the ability to review all of the evidence in this case, including attorney notes and work privileged documents.

A hearing is requested for this motion.

Submitted This 10 day of July, 2012.

  
Brian M. Tanner

**EXHIBIT A**

| NO. | DESCRIPTION   |
|-----|---|
| 1   | PRODUCED  |
| 2   | Ten plus pages of handwritten attorney notes entitled "trial notebook"  |
| 3   | Jury selection information, handwritten on printed form—three pages   |
| 4   | Memo to file dated March 19, 1985—general trial coordination—subpoena, witnesses,   |
| 5   | Jury roll call sheet and jury questionnaires—many handwritten notes   |
| 6   | Handwritten attorney notes entitled "Closing Argument"  |
| 7   | PRODUCED  |
| 8   | "Work Copy" of State's proposed jury instructions   |
| 9   | Annotated copy of Defendant's Requested Jury Instructions   |
| 10  | Annotated copy of instructions given  |
| 11  | Handwritten notes entitled jury instructions  |
| 12  | Notes to Steve from Marc Haws on Jury instructions  |
| 13  | Handwritten Attorney notes dated 2-26-87—appears to be issue analysis—given date possibly for appeal response or PCR response—group of docts pronged together |
| 14  | Annotated letters from Coakley to Charboneau  |
| 15  | Itinerary with handwritten names dated Feb. 10-20, 1985   |
| 16  | Attorney Notes—witnesses, sketches of crime scene, draft order, general impressions   |
| 17  | Misc. Handwritten attorney notes  |
| 18  | Misc. Handwritten attorney notes with cardboard back  |
| 19  | One page entitled Trial Notebook—Witnesses  |
| 20  | Phone message to Haws   |
| 21  | Highlighted mental status exam of Charboneau  |
| 22  | Handwritten post-it note attached to inside cover of file folder  |
| 23  | Case Notes—Gary Carr AG investigator  |
| 24  | Gary Carr handwritten notes   |
| 25  | PRODUCED  |
| 26  | State's proposed questions for Charboneau polygraph   |
| 27  | Letter from G. Bennett to Marc Haws dated December 20, 1984   |
| 28  | Handwritten evidence list on yellow legal pad—3 pages   |
| 29  | Handwritten and typed evidence logs—appear to have been sued during trial   |
| 30  | PRODUCED  |
| 31  | Handwritten and typewritten list of items contained in backpack—also post-it note saying Gary I gave Marc a copy of this list.                                |
| 32  | Attorney notes—Sue Albertson  |
| 33  | Attorney notes—Johnson, Robinson—printed case notes   |
| 34  | Handwritten notes re: Gary Aman   |
| 35  | Notes re: Tiff Arbaugh  |
| 36  | Notes re: Tira Arbaugh  |
| 37  | Notes re: Mary Arbaugh  |
| 38  | Notes and case notes re: Albert Barrinaga   |

|    |   |
|----|---|
| 39 | Notes re: Bart Chisam   |
| 40 | Notes re: Ray Clark   |
| 41 | Notes re: Marlene Felder  |
| 42 | Notes re: Gaston  |
| 43 | Notes re: Linda Hines   |
| 44 | Notes re: LaDonna Jones   |
| 45 | Case Notes re: Dick Meyers  |
| 46 | Case Notes re: Nevada witnesses   |
| 47 | Case Notes re: interview with Charboneau at insistence of Golden Bennett an various county deputies                             |
| 48 | Case notes re: Bob Sevy   |
| 49 | Notes re: Dee Silver  |
| 50 | Notes re: Chris Smart   |
| 51 | Notes re: Kathy Stewart   |
| 52 | Notes re: Gary Stowles  |
| 53 | Notes re: Nancy Wolfley   |
| 54 | Ruby's notes re: evidence and misc.   |
| 55 | Notes re: Owyee County people   |
| 56 | Notes re: Probable cause re: rape, grand theft, kidnapping  |
| 57 | Notes re: Chief Deputy Webb   |
| 58 | Memo to file re: witness participation in trial   |
| 59 | Phone messages re: trial attendance of witnesses  |
| 60 | Attorney notes—witness testimony  |
| 61 | Map with routes highlighted—presumably Charboneau's travels prior to murder   |
| 62 | PRODUCED  |
| 63 | Handwritten notes—one page re: defense witnesses  |
| 64 | PRODUCED  |
| 65 | PRODUCED  |
| 66 | Transcript of interview with Jaimi Charboneau by AG investigator Gary Carr  |
| 67 | Attorney notes impressions of strengths of case   |
| 68 | Attorney notes—trial notebook—notes for cross exam of Charboneau  |
| 69 | Attorney notes---pre-trial motions  |
| 70 | Attorney notes re: Preliminary Hearing  |
| 71 | Legal Research—Westlaw  |
| 72 | Copy of Trial Notebook—Opening Statement Outline  |
| 73 | Legal Research—Westlaw  |
| 74 | Legal Research—Westlaw—Attorney Notes   |
| 75 | Handwritten Attorney notes—sentencing   |
| 76 | Case Notes and proposed polygraph questions for Charboneau  |
| 77 | Handwritten notes re: witnesses and evidence; Handwritten pages marked "trial notebook" and "evidence"                          |
| 78 | Telephone message re: gunshot wound to left breast; note re: Dr. Ramsey; annotated diagram of gunshot wounds; handwritten notes |

mentioning Dr. Ramsey re: gunshot wounds

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
[ ISB No. 7450]

*Attorney for the Petitioner*

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 JUL 10 PM 2 51

*Michelle Emerso.*

BY *[Signature]* CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF

IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

Case No. CV. 2011-638

**NOTICE OF SERVICE**

**NOTICE IS HEREBY GIVEN** That Brian M. Tanner, Attorney of record for the above-named Petitioner, served a true and correct copy of **MOTION TO COMPEL PRODUCTION OF WORK PRIVILEGE DOCUMENTS FROM THE IDAHO ATTORNEY GENERAL'S OFFICE**, by depositing the same United States Mail, postage prepaid, upon the following attorney at the address below:

DATED this 10<sup>th</sup> day of July, 2012, to the following:

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

Dated this 10<sup>th</sup> of July, 2012.

TANNER LAW, PLLC.

*[Signature]*  
Brian M. Tanner,  
Attorney for Petitioner

NOTICE OF SERVICE - 1



BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 AUG 10 PM 5 00

Michelle Emerson  
CLERK

BY \_\_\_\_\_  
DEPUTY CLERK

ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO APPOINT CO-COUNSEL FOR  
PETITIONER AT COUNTY EXPENSE

COMES NOW, the Petitioner, by and through counsel, hereby requests the Court appoint co-counsel to assist current counsel in preparing for and participating in discovery, depositions and an evidentiary hearing. This motion is based on the following.

1. The Petitioner's Application for post conviction relief is voluminous as it relates to a first degree murder case which was tried over twenty five years ago. The allegations of a cover up and manipulation of evidence are serious and have merit. The effective resolution of the Petitioner's Application for post conviction relief requires extensive discovery and prehearing research.

2. The Idaho Attorney General's Office replaced the Jerome County Prosecutor's Office as counsel of record for the State of Idaho. Current counsel for the Petitioner requests professional legal assistance from an attorney in Boise so that he may communicate personally



and directly with the attorney general's office and review extensive discovery which is currently in Boise and in the possession of the attorney general's office.


3. Many of the potential deponents in this case are currently located in the Boise area. Counsel for the Petitioner requests assistance from a local attorney in order to avoid traveling back and forth to the Boise area.

4. It is anticipated that all services provided by co-counsel, especially as it involves work in the Boise area, will replace services provided by current counsel, thus avoiding additional expense to the county.

5. The Idaho Attorney General's Office has been contacted regarding this request and does not object.

For the following reasons, counsel for the Petitioner respectfully requests that he be allowed additional outside assistance in attempting to resolve this case. It is respectfully requested that John C. Lynn, who has been closely involved with this case and has principally communicated with Mr. Charboneau's family who reside in Boise, be appointed as co-counsel of record. It is respectfully requested that Mr. Lynn be compensated at a rate of \$125/hour. *Please see Application of John C. Lynn, attached hereto.*

Respectfully Submitted This 6<sup>th</sup> day of August, 2012.

  
\_\_\_\_\_  
Brian M. Tanner  
Attorney for Applicant



JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr., Ste 200  
Eagle, ID 83616  
ISB # 1548

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 AUG 10 PM 5 01

*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

|                        |   |                               |
|------------------------|---|-------------------------------|
| JAIMI DEAN CHARBONEAU, | ) |                               |
|                        | ) |                               |
| Petitioner,            | ) | Case No. CV-2011-638          |
| v.                     | ) |                               |
|                        | ) | <b>APPLICATION OF JOHN C.</b> |
| THE STATE OF IDAHO,    | ) | <b>LYNN FOR APPOINTMENT</b>   |
|                        | ) | <b>AS CO-COUNSEL FOR</b>      |
|                        | ) | <b>PETITIONER</b>             |
| Respondent.            | ) |                               |
|                        | ) |                               |

COMES NOW, John C. Lynn, attorney at law, and submits this APPLICATION  
OF JOHN C. LYNN FOR APPOINTMENT AS CO-COUNSEL FOR PETITIONER.  
This APPLICATION is based on the following grounds:

1. Applicant has been a licensed attorney who has continuously practiced law in the Idaho state and federal courts since 1973 from Boise and/or Eagle, Idaho.
2. Applicant has extensive experience in both criminal defense and civil litigation and is familiar with the Idaho Rules of Civil Procedure as well as their various discovery provisions.

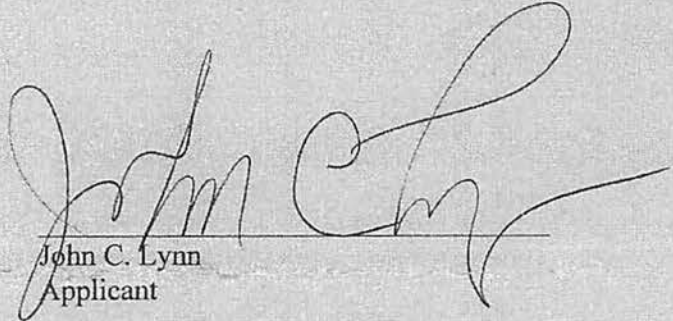
APPLICATION OF JOHN C. LYNN FOR APPOINTMENT AS CO-COUNSEL FOR  
PETITIONER P.1

3. Applicant is also familiar with the case herein and has advised and consulted with Petitioner's family members over the past several months as to the nature of the proceedings before the Court and the general requirements for a successful post-conviction proceeding under Idaho Code Section 19-4901 *et seq.*
4. Applicant is also aware that the State of Idaho is now represented by the Office of the Attorney General of the State of Idaho and that Petitioner is entitled to public defender services at a compensation rate comparable to that paid to the State of Idaho pursuant to Idaho Code Section 19-860(1).
5. Applicant believes that the allegations arising from the Amended Petition are serious and have merit. Applicant also believes resolution of these allegations will require extensive discovery and pre-hearing research and briefing.
6. That Brian Tanner, esq., current appointed counsel for Petitioner has requested assistance from Applicant on this matter. Applicant is willing to do so in such a way that there would be minimal duplication of service which would provide savings to the County. For example, many of the potential deponents in the case are located in the Boise areas and Applicant would be willing to depose said witnesses without the need for Mr. Tanner's presence or the travel costs associated therewith.
7. Applicant is willing to serve as co-counsel in the matter at a rate of compensation of \$125/hour which is the rate of compensation paid to CJA panel members of the local federal district court; such a rate would be as significant discount from Applicant's usual hourly rate.



8. Applicant is further willing to serve as co-counsel providing the Court issues an order that Applicant's billing, including out-of-pocket costs, would be paid timely subject to specific objection by the reviewing authority.

Dated this 3 day of August, 2012.



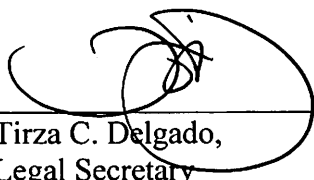
John C. Lynn  
Applicant

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 6th day of August, 2012, I caused a true and correct copy of the foregoing **MOTION TO APPOINT CO-COUNSEL FOR PETITIONER AT COUNTY EXPENSE** to the following person(s):

Jerome County Prosecutor

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Legal Secretary

BRIAN M. TANNER  
 Attorney at Law  
 137 Gooding St. W.  
 Twin Falls, ID 83301  
 Telephone: (208) 735-5158  
 Facsimile: (208) 734-2383  
 Idaho State Bar #7450

DISTRICT COURT  
 FIFTH JUDICIAL DIST  
 JEROME COUNTY IDAHO  
 2012 AUG 29 AM 11 51  
*Michelle Emerson*  
 CLERK  
 BY  
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

\*\*\*\*\*

JAMIE DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO  
 Respondent.

Case No. CV. 2011-638

NOTICE OF HEARING

\*\*\*\*\*

YOU WILL PLEASE take notice that the Petitioner will bring on for hearing his  
 MOTION TO APPOINT CO-COUNSEL before The Honorable Judge Elgee, at the Jerome  
 County Courthouse, Jerome, Idaho, at the hour of 2:00 p.m. on the 21<sup>st</sup> day of September, 2012,  
 or as soon thereafter as counsel can be heard.

Dated this 29<sup>th</sup> day of August, 2012.

TANNER LAW, PLLC

  
 Tirza C. Delgado

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
[ ISB No. 7450]

*Attorney for the Petitioner*

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 AUG 29 AM 11 51

*Michelle Emerson*

BY

CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

Case No. CV. 2011-638

**NOTICE OF SERVICE**

**NOTICE IS HEREBY GIVEN** That Tirza C. Delgado, assistant to Attorney of record, for the above-named Petitioner, served a true and correct copy of **NOTICE OF HEARING** on Motion to Appoint Co-Counsel, by fax upon the following attorney at the address below:

DATED this 29th day of August, 2012, to the following:

**KENNETH K. JORGENSEN**

Deputy Attorney General

P.O. Box 83720

Boise, ID 83720-0010

**JOHN L. HORGAN**

233 W. Main St.

Jerome, ID 83338

Dated this 29th of August, 2012.

TANNER LAW, PLLC.



Tirza C. Delgado

NOTICE OF SERVICE - 1



**LAWRENCE G. WASDEN**  
Idaho Attorney General

**PAUL R. PANTHER**  
Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**  
Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 SEP 4 AM 11 52

*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU, )

Petitioner, )

vs. )

THE STATE OF IDAHO, )

Respondent. )

Case No. CV-2011-638

RESPONDENT'S NOTICE OF  
NON-OBJECTION TO DEFENDANT'S  
MOTION TO APPOINT CO-COUNSEL

**COMES NOW**, Kenneth K. Jorgensen, Deputy Attorney General and Special Prosecuting Attorney for Jerome County and files this notice of non-objection to Defendant's motion to appoint co-counsel and requests the hearing be vacated.

DATED this 4<sup>th</sup> day of September 2012.

*[Signature]*  
KENNETH K. JORGENSEN  
Deputy Attorney General

RESPONDENT'S NOTICE OF NON-OBJECTION TO DEFENDANT'S MOTION TO  
APPOINT CO-COUNSEL (CHARBONEAU), Page 1



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of September 2012, I caused to be served a true and correct copy of the foregoing Respondent's Notice of Non-objection to Defendant's Motion to Appoint Co-Counsel to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

  
Rosean Newman, Legal Secretary

**RESPONDENT'S NOTICE OF NON-OBJECTION TO DEFENDANT'S MOTION TO  
APPOINT CO-COUNSEL (CHARBONEAU), Page 2**

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN #4051  
JESSICA M. LORELLO #6554  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 SEP 12 AM 10 52

Michelle Emerson  
CLERK  
BY  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

CASE NO. CV-2011-638

STIPULATION TO *IN CAMERA*  
REVIEW OF DOCUMENTS

COME NOW the parties, by and through undersigned counsel and submit the following stipulated motion resolving Petitioner's motion to compel.

1. The parties hereby stipulate that the State will provide copies of all documents subject to its claim of work-product privilege, as set forth in the attached privilege log, to the Court for *in camera* inspection. Such documents shall be submitted under seal pursuant to I.A.R. 32 and not be made available to the public or the Petitioner except as ordered by the Court pursuant to the terms as set forth below.

STIPULATION - Page 1

2. The Court shall review the submitted documents for discoverability. Discoverability will be governed by Idaho Rule of Civil Procedure 26(b). Specifically, a document is discoverable if it is

- a. "relevant to the subject matter" of this case, I.R.C.P. 26(b)(1); and
- b. either (1) not covered by the work-product privilege, I.R.C.P. 26(b)(1), or, if privileged (2) Petitioner has a "substantial need" for the work-product privileged document and Petitioner is "unable without undue hardship to obtain the substantial equivalent of the materials by other means," I.R.C.P.

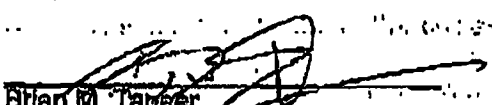
26(b)(3).


3. Any document the Court deems discoverable shall be provided to Petitioner by the State pursuant to Court order.

4. The Court shall retain the copies submitted for *in camera* review as a sealed exhibit. The sealed exhibit will be available for review by an appellate court upon an appeal by either side in which the sealed exhibit is requested as part of the record.

5. This stipulation settles Petitioner's "Motion to Compel Production of Work Privilege Documents from the Idaho Attorney General's Office" without prejudice to bringing future motions to compel by either party. The parties stipulate to having the Court dismiss said motion.

RESPECTFULLY SUBMITTED.

  
Brian M. Tanner  
Attorney for Petitioner  
JAIM DEAN CHARBONEAU

  
Kenneth K. Jorgensen  
Attorney for respondent  
STATE OF IDAHO

Date: Sep 11, 2012

Date: 9/11/12


STIPULATION - Page 2

**CERTIFICATE OF DELIVERY**

I undersigned, certify that on the 12<sup>th</sup> day of September, 2012, I caused  
**STIPULATION TO IN CAMERA REVIEW OF DOCUMENTS** a true and correct  
copy of the foregoing to the following person(s):

Office of the Attorney General  
Kenneth K. Jorgensen  
P.O. Box 83720  
Boise, ID 83720-0010

☒ Facsimile  
☐ U.S. Mail  
☐ Certified Mail  
☐ Hand Delivered

  
\_\_\_\_\_  
Tirza C. Delgado,  
Legal Secretary

## Charboneau Privilege Log

| #  | DESCRIPTION   |
|----|---|
| 2  | Outline and notes related to prosecutor's opening statement and defense opening statement at trial  |
| 3  | Seating chart for potential jurors and jury list, both with prosecutor's notes for jury selection.  |
| 4  | "Memo to file" from "jas" containing communications with witnesses regarding service of subpoenas and travel arrangements, contact information for witnesses, and directions from prosecutor regarding reluctant witnesses. One entry dealing with Cheryl Watts regarding witness travel costs. One entry arranging appearance of Deputy Roger Driesel.   |
| 5  | Juror information provided by jury commissioner, hand-written notes by prosecution added  |
| 6  | One page "sticky notes," eight pages legal size. Hand-written notes of prosecutor regarding closing and rebuttal closing arguments and defense closing.   |
| 8  | "Working copy" of state's proposed jury instructions, includes hand-written notes re: law and potential changes.  |
| 9  | Defense's proposed instructions with hand-written notes re: potential objections.   |
| 10 | "Instructions given" including underlining and notes  |
| 11 | Handwritten notes regarding jury instructions   |
| 12 | Another copy of instructions given with underlining and (different) notes.  |
| 13 | <ul style="list-style-type: none"> <li>a. Handwritten notes dated 2-26-87, possibly for petition for habeas corpus</li> <li>b. Handwritten notes related to petition for habeas corpus and motion for new trial, apparently taken during hearing.</li> <li>c. 9/9/86 Phone note "while you were out" from Cheryl Watts apparently regarding scheduling briefing</li> <li>d. Handwritten notes titled: "Post conv notes &amp; exhibits"</li> <li>e. Handwritten notes titled "Notes hearing 18 June 86"</li> <li>f. Handwritten note titled "note for Charboneau post conv relief file"</li> <li>g. Handwritten notes from "Stoker deposition"</li> <li>h. Handwritten notes from "Deposition Jim Coakley 30 Apr 86"</li> <li>i. Handwritten notes from "Deposition—Gary Carr 30 Apr"</li> <li>j. Handwritten notes from "Depo of Bennett 4/16/86" (with depositions exhibits attached)</li> </ul> |
| 14 | Copies of letters to Charboneau from Golden Bennett dated August 28, 1984, September 5, 1984, September 12, 1984, November 29, 1984, and January 7, 1985 and letter from Charboneau to Bennett dated August 23, 1984 with handwritten notes and underlining.  |
| 15 | "Itinerary" for "Charboneau Case ... February 19-20, 1985" includes list of names and potential exhibits. Included in names is "Tira Arbaugh" without further statement.  |
| 16 | Notes apparently related to preliminary hearing <ul style="list-style-type: none"> <li>a. Hand-drawn map.</li> <li>b. Notes regarding orders to be submitted to court and other notes. Includes line: "Depositions Tira, Tiffney, Marlene, Jim father, Jim Jr."</li> </ul>  |

|    |  |
|----|--|
|    | <ul style="list-style-type: none"> <li>c. List of matters to be done, apparently in preparation of trial.</li> <li>d. Handwritten contact information and notes</li> <li>e. Handwritten notes titled "Adamson notes"</li> <li>f. Handwritten notes on probable cause</li> <li>g. Handwritten notes on elements of charges</li> <li>h. Handwritten note titled "Witness order"</li> <li>i. Handwritten note for elements of grand theft auto</li> <li>j. Handwritten notes of matters to be proved for first-degree murder and evidence proving those matters</li> <li>k. Handwritten notes regarding how to conduct discovery</li> <li>l. Handwritten legal notes regarding "access to evidence"</li> <li>m. Handwritten notes regarding argument</li> <li>n. Handwritten note regarding "Rosie Pegram"</li> <li>o. Handwritten notes titled "Argument Questions"</li> <li>p. Handwritten note regarding arrest warrant</li> <li>q. Handwritten note titled "Bennet Argument"</li> <li>r. Handwritten note titled "trial Notebook" regarding jury selection</li> </ul> |
| 17 | <ul style="list-style-type: none"> <li>a. Handwritten witness list with contact information, includes Tira Arbaugh with phone number and road name and Larry Webb with note regarding defendant's statements when arrested</li> <li>b. Trial schedule</li> <li>c. Copy apparently duplicative of 17.a. above</li> <li>d. Handwritten notes with diagram and "to do" list</li> <li>e. Handwritten notes titled "cross [defendant]"</li> <li>f. Handwritten "to do" lists, item 14 first page is "Cheryl Watts—clerk Jerome co."</li> <li>g. Handwritten diagram and notes</li> <li>h. Handwritten notes regarding jury instructions</li> <li>i. Handwritten draft of proposed order regarding exhuming Marilyn Arbaugh</li> <li>j. Handwritten notes on tactics</li> <li>k. Handwritten "to do" lists</li> </ul>  |
| 18 | Handwritten trial notes and documents, including witness list, trial schedule, notes for examination of state's witnesses, including Deputy Webb and Tira Arbaugh, notes related to cross examination of witnesses, and hand-drawn diagram   |
| 19 | Handwritten witness list with witness' contact information   |
| 20 | Notes on scratch paper and telephone message slip  |
| 21 | Report of competency evaluation of Charboneau, with highlighting   |
| 22 | Post-it note regarding definition of kidnapping  |
| 23 | <p>Typewritten case notes from AG office investigator Gary Carr:</p> <ul style="list-style-type: none"> <li>a. January 17, 1985—mentions Deputy Webb as assisting in coordinating appointments for witness interviews and reviewing the physical evidence and crime scene, one witness interviewed was Tira Arbaugh whose information matched her testimony at the preliminary hearing</li> <li>b. February 25, 1985—participating in interview of Tira Arbaugh with Marc haws on February 19, 1985 and being given custody of additional evidence by</li> </ul>   |

|    |  |
|----|--|
|    | Deputy Webb and Larry Webb turned over physical evidence<br>o. March 20, 1985—mentions requesting Deputy Webb to obtain Tiffany Arbough's Savage .22 caliber rifle and send it to the crime lab for testing—<br>mentions Deputy Webb's presence at the exhumation of Marilyn Arbaugh<br>d. April 11, 1985—mentions April 5 and 9, 1985 visits to murder scene by Haws, Carr, Webb and others to see if any evidence missed |
| 24 | "Case Log Action sheet[s]"—handwritten notes apparently kept by investigator Carr  |
| 26 | Type-written proposed questions for Charboneau polygraph   |
| 27 | December 20, 1984 letter from Golden Bennett detailing defense theory of cases with highlighting and handwritten notes added   |
| 28 | Two handwritten evidence lists   |
| 29 | One typewritten evidence log and one handwritten evidence log  |
| 31 | One typewritten list of "Contents of backpack" and one handwritten list of same  |
| 32 | Handwritten notes regarding Sue Albertson  |
| 33 | a. Typewritten "case note" regarding interview with Valeris Obenchain;<br>b. Handwritten note titled "Rod Johnson";<br>c. Handwritten note titled "Val Obenchain"  |
| 34 | Handwritten note title "Gary Aman"   |
| 35 | a. Handwritten note title "Tiffany Arbaugh cross-X";<br>b. Handwritten note titled "Tiffany Arbaugh";<br>c. Handwritten note title "Tiffnie Halman";<br>d. Handwritten statement of Tiffnie Arbaugh;<br>e. Handwritten statement of Tiffi Arbaugh  |
| 36 | Handwritten notes regarding Tira Halman (Arbaugh) apparently taken at trial with typewritten pages of case notes by investigator Carr referencing Tira Arbaugh   |
| 37 | Handwritten notes regarding Mary Arbaugh with typewritten page of case notes by investigator Carr referencing Mary Arbaugh   |
| 38 | Handwritten note regarding Albert Barinaga with typewritten page of case notes by investigator Carr referencing Albert Barinaga  |
| 39 | Handwritten note regarding Bart Chisam with typewritten page of case notes by investigator Carr referencing Bart Chisam  |
| 40 | Handwritten note titled "Ray Clark"  |
| 41 | Handwritten note titled "Marlene Felder"   |
| 42 | Handwritten notes titled "R B Gaston"  |
| 43 | Handwritten note regarding Linda Hines with typewritten page of case notes by investigator Carr referencing Linda Hines  |
| 44 | Handwritten note regarding LaDonna Jones with typewritten page of case notes by investigator Carr referencing LaDonna Jones  |
| 45 | Copies of receipts related to Charboneau's purchase of Remington .22 rifle and ammunition  |
| 46 | Copy of first three pages of February 2, 1985 "case notes" with highlighting (See # 23, above)   |
| 47 | Copy of pages 2 and 3 of January 17, 1985 "case notes" with highlighting (See # 23, above)   |



|    |   |
|----|---|
| 48 | Copy of page 3 of February 2, 1985 "case notes" with highlighting (See # 23, above)   |
| 49 | Handwritten notes titled "Dorinda 'Dee' Silver" with copy of page of case notes referring Dee Silver  |
| 50 | a. Handwritten note with contact information of various witnesses;<br>b. Notes titled "Chris Smart"   |
| 51 | Handwritten note titled Kathy Stewart with copy of page of case notes referencing Kathy Stewart   |
| 52 | a. Page of case notes related to Gary Stowles;<br>b. Handwritten notes related to examination and cross examination of Larry Webb;<br>c. Handwritten notes related to witness Ray Clark                     |
| 53 | Handwritten notes titled "Nancy Wolfley"  |
| 54 | a. Handwritten list titled "State's Exhibits";<br>b. Handwritten notes related to state's witnesses Dr. Robert A. Ramsey, Gary Amon, Tiffy Arbaugh, Sue Albertson, Barinaga and defense witness Tira Halman |
| 55 | Handwritten notes related to "Owyhee County People"   |
| 56 | Handwritten notes from June 29, 1984 probable cause hearing (apparently from rape charge)   |
| 57 | Copy of page 1 of January 17, 1985 case notes (see # 23 above)  |
| 58 | "Memo to file" by "jas" identical to #4, above, for entries from March 19, 1985 to first part of entry of April 16, 1985, but then contains additional entries, including reference to "Roger Driesal."     |
| 59 | Phones messages from witnesses regarding appearances.   |
| 60 | a. Handwritten note regarding the order to call witnesses—mentions Tira Arbaugh and Larry Webb;<br>b. Handwritten notes regarding elements of crimes;<br>c. Handwritten witness list                        |
| 61 | Map of SW Idaho, SE Oregon and northern Nevada with notes and markings  |
| 63 | Handwritten note an defense witnesses   |
| 66 | Typewritten transcript of interview with Charboneau with highlighting.  |
| 67 | Handwritten notes titled "State strengths to emphasize"   |
| 68 | Handwritten notes regarding "Cross-examination of J. Charboneau"  |
| 69 | a. Handwritten notes titled "pretrial motions"<br>b. Handwritten notes titled "cross-examination of [defendant]"  |
| 70 | Handwritten list of names and contact information for preliminary hearing witnesses   |
| 71 | a. Brief of amici curiae in support of Charboneau's petition for cert. to the SCOTUS with highlighting;<br>b. Handwritten notes on legal points, elements of crimes   |
| 72 | Handwritten outline of opening statement  |
| 73 | Legal research  |
| 74 | Legal research  |
| 75 | Handwritten notes regarding precedents  |
| 76 | Documents related to Charboneau polygraph   |

|    |   |
|----|---|
| 77 | a. Handwritten exhibit list;<br>b. Handwritten witness list regarding foundation for exhibits |
| 78 | Notes regarding Dr. Ramsey  |

Items 1, 7, 25, 30, 62, 64, and 65 form original privilege log were disclosed in initial disclosure and made available for inspection and copying.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

233 WEST MAIN STREET

JEROME, IDAHO 83338

FIFTH JUDICIAL DIST

JEROME COUNTY IDAHO

JAIMI DEAN CHARBONEAU #22091, PLAINTIFF,

Plaintiff,

vs

STATE OF IDAHO, DEFENDANT,

Defendant.

2012 SEP 14 PM 4 15

*Michelle Emerson*

CLERK

BY

DEPUTY CLERK

Case No: CV-2011-0000638

**Amended NOTICE OF HEARING  
TIME ONLY**

**NOTICE IS HEREBY GIVEN** that the above-entitled case is hereby set for:

Motion to appt co-counsel

Judge:

Courtroom:

Friday, September 21, 2012 **11:30 AM**

Robert Elgee

Courtroom #2 - District Courtroom

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Friday, September 14, 2012.

Counsel:

BRIAN M. TANNER

137 GOODING ST. W

TWIN FALLS ID 83301

Mailed ☒

Hand Delivered ☐

Counsel:

JOHN HORGAN

Mailed ☐

Hand Delivered ☒

Dated: Friday, September 14, 2012

Michelle Emerson

Clerk Of The District Court

By: 

Deputy Clerk

CC: Atty General's Office

NOTICE OF HEARING

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed SEP 19 2012

CLERK *Michelle Emerson*

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

THE STATE OF IDAHO ,

Respondent.

Case No. CV-2011-638

**ORDER FOR IN CAMERA  
REVIEW OF DOCUMENTS**

This matter having been submitted by stipulation signed by both parties and the Court having reviewed the same does hereby Order the stipulated documents be reviewed in camera.

DATED this 14 day of September 2012.

*Robert J. Elgee*  
ROBERT J. ELGEE  
District Judge



**ORDER IN CAMERA REVIEW**



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

**Civil Minute Entry  
Jaimi Dean Charboneau vs State of Idaho  
CV 2011-638  
DATE: 9-21-12 @ 11:30 a.m.**

**Honorable Robert Elgee, District Judge presiding  
Sue Israel, Court Reporter  
Shelly Creek, Minute Clerk  
Courtroom: District Court #2  
MATTER BEFORE THE COURT:**

1:19 This being the time and place set for: a Motion to Appoint Co-Counsel, court convenes.

Parties identified for the record.

Plaintiff: Counsel Brian Tanner is present on behalf of Jaimi Dean Charboneau

Defendant: Counsel John Horgan is present on behalf of the State of Idaho

1:19 Court: Attorney General's office sent me a notice stating they did not oppose the motion. I sent an email back stating that I felt Jerome County was real party of interest and had opportunity to be heard. Told the Attorney General's office they did not need to appear on that motion.

1:20 Mr. Tanner: No additional comments. Biggest issue is this is a pretty big case. Did not realize how big it was when I started. I think this might be the biggest case in State of Idaho and I need help. That is why I am requesting it. Proceeds with motion.

1:25 State: Don't know if I have stand in standing here.

1:25 Court addresses State

1:25 State: We object.

1:31 Court: Addresses both counsel. Will grant motion. Mr. Tanner to submit order. Try to avoid duplication of effort.

Court in Recess.

End Minute Entry.

Attest: Shelly Creek  
Shelly Creek,  
Deputy Clerk

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2012 SEP 24 PM 3 23  
Michelle Emerson  
BY Michelle Emerson  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

ORDER TO APPOINT CO-COUNSEL FOR  
PETITIONER AT COUNTY EXPENSE

THE COURT, having considered the Petitioner's Motion to Appoint Co-Counsel, and  
having found good cause therein, IT IS HEREBY ORDERED, that John C. Lynn, be appointed  
as co-counsel of record and that he be compensated at a rate of \$125.00 per hour.

Dated this 21 September day of ~~August~~, 2012.

Robert Elgee  
Honorable Judge Elgee

**CERTIFICATE OF MAILING**

I do hereby certify that a full, true and correct copy of the foregoing **ORDER TO APPOINT CO-COUNSEL FOR PETITIONER AT COUNTY EXPENSE** was mailed to:

Brian M. Tanner  
137 Gooding Street West  
Twin Falls, ID 83301  
Facsimile: (208) 734-2383

( ) Facsimile  
(☒) U.S. Mail  
( ) Certified Mail  
( ) Hand Delivered

Kenneth Jorgensen  
Office of the Attorney General  
700 W. Jefferson Street  
P.O. Box 83720  
Boise, ID 83720-0010  
Phone (208) 334-2400  
Fax (208) 854-8071

( ) Facsimile  
(☒) U.S. Mail  
( ) Certified Mail  
( ) Hand Delivered

DATED this 24 day of Sept, 2012.

cc. John Horgan  
Judge Elise

  
\_\_\_\_\_  
Deputy Clerk





LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
Idaho State Bar # 4051  
Deputy Attorney General  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 OCT 9 PM 4 36

*Lichelle Emerson*

BY *[Signature]*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR JEROME COUNTY

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

)  
)  
) Case No. CV-2011-638  
)  
)

) STATE'S ANSWER TO  
) AMENDED PETITION FOR  
) POST-CONVICTION RELIEF  
)  
)  
)  
)

**COMES NOW** the State of Idaho appearing through Kenneth K. Jorgensen, Deputy Attorney General and Special Prosecuting Attorney for Jerome County, State of Idaho, and does hereby answer Jaimi Dean Charboneau's Amended Petition for Post-Conviction Relief ("Amended Petition") in the above-entitled action as follows: The state hereby **denies** any allegation not herein specifically admitted.

STATE'S ANSWER TO AMENDED PETITION  
FOR POST-CONVICTION RELIEF- 1

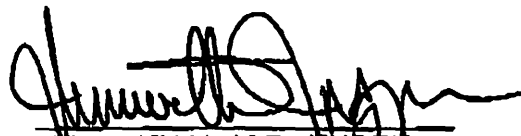
1. The state **admits** the allegations paragraphs 1, 2, and 7 of the Amended Petition.
2. The state **admits** that Charboneau has been convicted of first-degree murder as alleged in paragraph 3; **admits** he has been sentenced to fixed life as alleged in paragraph 5, and **admits** that there have been prior criminal and civil proceedings but asserts that the list in paragraph 6 is inaccurate and incomplete. The state **denies** all other allegations of these paragraphs.
3. The state **denies** all other allegations of the Petition and Amended Petition.
4. The request for judicial notice in paragraph 6 of the Amended Petition is improper and does not conform to the requirements of I.R.E. 201(c), and should therefore be denied.

The state asserts the following **affirmative defenses**:

1. The Amended Petition is untimely and barred. I.C. § 19-4902(a).
2. The Amended Petition is barred because it is successive, and is subject to dismissal under doctrines of waiver, res judicata, and collateral estoppel. I.C. § 19-4908.
3. The Amended Petition is not verified and should therefore be dismissed. I.C. § 19-4902(a).
4. The Amended Petition is not supported by admissible evidence as required by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901(a); DeRushe v. State, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009); Ivey v. State, 123 Idaho 77, 87-81, 844 P.2d 706, 716-17 (1992).

STATE'S ANSWER TO AMENDED PETITION  
FOR POST-CONVICTION RELIEF- 2

DATED this 9th day of October 2012.

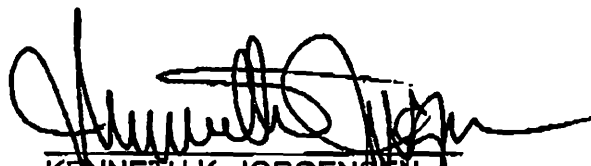


KENNETH K. JORGENSEN  
Deputy Attorney General  
Attorney for the Respondent

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of October, 2012, I caused to be served a true and correct copy of the foregoing State's Answer to Amended Petition for Post-Conviction Relief to:

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding Street West  
Twin Falls, ID 83301

  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/pm

STATE'S ANSWER TO AMENDED PETITION  
FOR POST-CONVICTION RELIEF- 3

BRIAN M. TANNER  
 Attorney at Law  
 137 Gooding Street W.  
 Twin Falls, ID. 83301  
 Telephone: (208) 735-5158  
 Facsimile: (208) 734 - 2383  
 Idaho State Bar #7450

DISTRICT COURT  
 FIFTH JUDICIAL DIST  
 County of Jerome, State of Idaho

Filed OCT 12 2012

CLERK *Michelle Emerson*  
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
 IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

EX-PARTE MOTION TO ALLOW  
 PETITIONER TO SERVE DISCOVERY  
 REQUESTS UPON THE RESPONDENT  
 AND ATTORNEY OF RECORD

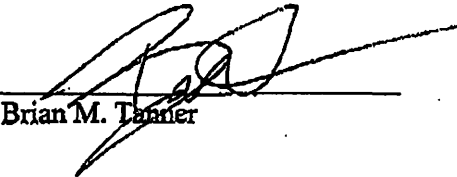
COMES NOW, the above named Petitioner, JAIME CHARBONEAU, by and through his attorney of record, Brian M. Tanner, and hereby requests this Court allow the Petitioner to serve formal discovery upon the Respondent and its attorney of record in conformity with the Idaho Rules of Civil Procedure.

Idaho Criminal Rule 57(b) states that the petition for post-conviction relief shall be filed by the clerk of the court as a separate civil case and be processed under the Idaho Rules of Civil Procedure except as otherwise ordered by the trial court; **provided the provisions for discovery in the Idaho Rules of Civil Procedure shall not apply to the proceedings unless and only to the extent ordered by the trial court.**

EX-PARTE MOTION TO SERVE DISCOVERY - 1

The Petitioner has prepared discovery requests and intends to deliver these requests to the Respondent. See attached. Accordingly, the Petitioner seeks an order from the trial court allowing discovery pursuant to the Idaho Rules of Civil Procedure.

Dated This 12<sup>th</sup> of October, 2012.

  
Brian M. Tanner

The Petitioner has prepared discovery requests and intends to deliver these requests to the Respondent. See attached. Accordingly, the Petitioner seeks an order from the trial court allowing discovery pursuant to the Idaho Rules of Civil Procedure.



If an INTERROGATORY contains several parts, please ensure that your answer accurately reflects which part is being answered.

You are specifically advised, pursuant to I.R.C.P. 33(a)(1) that these INTERROGATORIES are served upon all officers and agents of the Respondent, State of Idaho, including, but not limited to, the Attorney General's Office for the State of Idaho, the Jerome County Prosecuting Attorney's Office, the Jerome County Sheriff's Office, the Idaho Department of Corrections, the Idaho State Police and any attorney representing these entities. You are specifically requested to identify the name and representative capacity for each of the propounded INTERROGATORIES set forth below.

These INTERROGATORIES are deemed continuing, requiring you to supplement your answers if further appropriate information is obtained subsequent to service of your answers on Petitioner.

**INTERROGATORY NO. 1:** With respect to the alleged "packet" of documents given to Petitioner on March 18, 2011, as set forth in the AMENDED PETITION filed herein:

(a) Please identify the name, address, telephone number of each and every person known to you who has knowledge of or purports to have knowledge of the existence, preparation and custody of the "packet";

(b) Please identify the name, address, telephone number of each and every person known to you who has knowledge of or purports to have knowledge of any inquiry or investigation relating to the "packet" or any item, including document or writing, relating to the "packet" allegedly contained in the "packet" or written upon any such document in the "packet".

**INTERROGATORY NO. 2:** With respect to the persons you have identified in your answer to INTERROGATORY NO. 1, please state the general nature of the facts to which they have knowledge.

**INTERROGATORY NO. 3:** With respect to the "packet", please identify each and every document found in the packet.

**INTERROGATORY NO. 4:** With respect to the "packet" please describe in narrative form the circumstances which led to its discovery.

**INTERROGATORY NO. 5:** With respect to the "packet" please identify where the packet was located upon discovery. Please include information regarding the room in which it was found and the location at the prison where it was found.

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO RESPONDENT - 2



**INTERROGATORY NO. 6:** Please also identify if any other information was found in the Charboneau file that has not yet been revealed to the Petitioner and his counsel.

**INTERROGATORY NO. 7:** Please identify the person or person(s) who discovered the packet on March 18, 2011.

**INTERROGATORY NO. 8:** Please describe how the "packet" and the material found within the packet arrived at the prison in Orofino, Idaho and in Mr. Charboneau's file? Please describe the process by which any information and documents are placed in an inmate file at the prison in Orofino, Idaho. Please describe the office personnel involved in the transfer of mail and documents to the personal inmate files at the prison in Orofino, Idaho.

**INTERROGATORY NO. 9:** Please state whether any inmates can or do have access to the inmate files, including Mr. Charboneau's file where the "packet" was found.

**INTERROGATORY NO. 10:** Please state what information or documents Mr. Hiskett reviewed or observed in Mr. Charboneau's file located at the prison in Orofino, Idaho.

**INTERROGATORY NO. 11:** Please describe what documents Mr. Hiskett delivered to Mr. Charboneau on March 18, 2011.

**INTERROGATORY NO. 12:** Please describe the method in which Mr. Hiskett delivered the "packet" to Mr. Charboneau on March 18, 2011. Did he hand the documents personally to Mr. Charboneau, or did he mail them?

**INTERROGATORY NO. 13:** Was Mr. Hiskett physically present when Mr. Charboneau received and reviewed the "packet."

**INTERROGATORY NO. 14:** Please state whether the Respondent or counsel for Respondent or the Idaho Department of Corrections has conducted its own evaluation or review of the authenticity of the emails purportedly written by and between Lieutenant Unger and Dwayne Shedd, which are parts of the Petitioner's Amended Petition, Exhibit A.

ATED This \_\_\_\_\_ day of September, 2012.

\_\_\_\_\_  
JOHN C. LYNN  
Attorney for Petitioner

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO RESPONDENT - 3

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Phone: 208.735.5158  
Fax: 208.734.2383  
ISB# 7450

JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr.  
Suite 200  
Eagle, ID 83616  
Phone: 208.685.2333  
Fax: 208.685.2355  
Email: johnlynn@fiberpipe.net  
ISB #1548

Attorneys for Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

JAMI DEAN CHARBONEAU,

Petitioner,

THE STATE OF IDAHO,

Respondent.

Case No. CV-2011-638

**PETITIONER'S FIRST SET OF  
REQUESTS FOR ADMISSIONS  
TO RESPONDENT**

TO: THE ABOVE-NAMED RESPONDENT AND ITS ATTORNEYS OF RECORD:

YOU ARE HEREBY REQUESTED To admit under oath, within thirty (30) days after the service hereof, the following REQUESTS FOR ADMISSIONS, pursuant to Rule 36 of the Idaho Rules of Civil Procedure.

**REQUEST NO. 1:** With respect to each item (Exhibit A through G) given to the Petitioner on March 18, 2011, in the "packet", as alleged in the AMENDED PETITION filed herein, please:

- (a) admit that each item is an authentic original or an authentic copy of the original;
- (b) admit the each item was contained in the "packet" of documents.

**PLAINTIFF'S FIRST REQUESTS FOR ADMISSION TO RESPONDENT - 1**

**REQUEST NO. 2:** With respect to the allegations in the AMENDED PETITION that Dwayne Shedd and William Unger intercepted, seized and/or confiscated Petitioner's correspondence, and mail and other materials in the "packet", please:

(a) admit Dwayne Shedd did, in fact, intercept, seize and/or confiscate the following items found within the "packet";

i. Exhibit C

ii. Exhibit D

iii. Exhibit E

iv. Exhibit F

v. Exhibit G

(b) admit that Dwayne Shedd authored the portions of Exhibit A and Exhibit B which, purportedly, were sent by Dwayne Shedd;

(c) admit that Dwayne Shedd, prior to March 18, 2011, had intercepted inmate mail and/or correspondence;

(d) admit that Dwayne Shedd was one of the IDOC employees who had intercepted inmate mail and/or correspondence in the Idaho Federal District Court Case, entitled *Gomez v. Vernon, et al*, Case No. CV910299;

(e) admit that William Unger did, in fact, author the portion of Exhibit A which, purportedly, was sent by William Unger.

**REQUEST FOR ADMISSION NO. 3:** Please admit that Officer Mike Hiskett discovered the "packet" of documents on March 18, 2011.

**REQUEST FOR ADMISSION NO. 4:** Please admit that Officer Mike Hiskett delivered the "packet" to Mr. Charboneau on the same day.

**REQUEST FOR ADMISSION NO. 5:** Please admit that the location in which Officer Hiskett found the "packet" is not accessible by any inmates at the Idaho Department of Corrections in Orofino, Idaho.

DATED This \_\_\_\_ day of October, 2012.

**PLAINTIFF'S FIRST REQUESTS FOR ADMISSION TO RESPONDENT - 2**

---

JOHN C. LYNN  
Attorney for Petitioner

...

PLAINTIFF'S FIRST REQUESTS FOR ADMISSION TO RESPONDENT - 3

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Phone: 208.735.5158  
Fax: 208.734.2383  
ISB# 7450

JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr.  
Suite 200  
Eagle, ID 83616  
Phone: 208.685.2333  
Fax: 208.685.2355  
Email: johnlynn@fiberpipe.net  
ISB #1548

Attorneys for Petitioner

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU,

Petitioner,

THE STATE OF IDAHO,

Respondent.

Case No. CV-2011-638

PETITIONER'S FIRST SET OF  
REQUESTS FOR PRODUCTION  
OF DOCUMENTS

TO: THE ABOVE-NAMED RESPONDENT AND ITS ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE That the Petitioner herein, pursuant to Rules 34 and 26 of the Idaho Rules of Civil Procedure, requests the production of documents ("REQUESTS") hereinafter described at the offices of the undersigned co-counsel for Petitioner, within thirty (30) days of service hereof. Compliance with these REQUESTS may be made by mailing copies or providing digital copies of the requested documents to the offices of JOHN C. LYNN, 776 E. Riverside Dr., Suite 200, Eagle, Idaho, 83616, within the requisite time period above provided.

Please produce, pursuant to these REQUESTS:

REQUEST NO. 1: All documents generated by you or third parties as a result of the filing of Petitioner's original PETITION FOR POST CONVICTION RELIEF in this proceeding.

PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS - 1

**REQUEST NO. 2:** All documents relating to any inquiry or investigation of the alleged "packet" of documents given to Petitioner on March 18, 2011, as set forth in the AMENDED PETITION filed herein.

**REQUEST NO. 3:** All documents relating to any inquiry or investigation of any item, including any document or writing, contained in the "packet" or written upon any such document in the "packet".

**REQUEST NO. 4:** All documents relating to the policy and practice of the inspecting and/or seizing of inmate correspondence in effect at the Idaho Department of Corrections ("IDOC") during Petitioner's incarceration at the IDOC.

**REQUEST NO. 5:** All documents generated by the Jerome County Sheriff's Office relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

**REQUEST NO. 6:** All documents generated by the Jerome County Prosecutor's Office relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

**REQUEST NO. 7:** All documents generated by Attorney General's Office for the State of Idaho relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

**REQUEST NO. 8:** All documents generated by the Idaho State Police relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

**REQUEST NO. 9:** Please provide the original Tira Arbaugh letter dated September 6, 1989, which is addressed to Judge Becker and is attached as a copy to the Amended Petition as Exhibit G.

**REQUEST NO. 10:** Please provide the original envelope, which is post stamped September 7, 1989 and addressed to Judge Becker from Tira Arbaugh, the copy of which is attached to the Amended Petition as Exhibit F.

**REQUEST NO. 11:** Please provide the original letter written to Golden Bennett from Jaimi Charboneau, dated August 10, 1984, which is attached as a copy to the Amended Petition, Exhibit K.

**REQUEST NO. 12:** Please provide the original letter written to Golden Bennett from Jaimi Charboneau, dated August 13, 1984, which is attached as a copy to the Amended Petition, Exhibit L.

DATED This \_\_\_\_ day of October, 2012.

\_\_\_\_\_  
JOHN C. LYNN  
Attorney for Petitioner

PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS - 2

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
[ ISB No. 7450]

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed OCT 12 2012  
Michelle Emerson  
CLERK  
DEPUTY CLERK

*Attorney for the Petitioner*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

Case No. CV. 2011-638

**NOTICE OF SERVICE**

**NOTICE IS HEREBY GIVEN** That Brian M. Tanner, Attorney of record for the above-named Petitioner, served a true and correct copy of **EX-PARTE MOTION TO ALLOW PETITIONER TO SERVE DISCOVERY REQUESTS UPON THE RESPONDENT AND ATTORNEY OF RECORD**, by fax upon the following attorney at the address below:  
DATED this 12<sup>th</sup> day of October, 2012, to the following:

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

Dated this 12<sup>th</sup> of October, 2012.

TANNER LAW, PLLC.

  
Tirza C. Delgado,  
Legal Assistant

NOTICE OF SERVICE - 1



LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

ISB #4051

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 OCT 18 AM 8 32

Michelle Emerson

BY

CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV-2011-638

OBJECTION TO "EX-PARTE  
MOTION TO ALLOW PETITIONER  
TO SERVE DISCOVERY  
REQUESTS UPON THE  
RESPONDENT AND ATTORNEY  
OF RECORD"

COMES NOW, Respondent, State of Idaho, by and through the Office of the Attorney General, and hereby objects to Charboneau's "EX-PARTE MOTION TO ALLOW PETITIONER TO SERVE DISCOVERY REQUESTS UPON THE RESPONDENT AND ATTORNEY OF RECORD" (hereinafter "Ex Parte Motion") filed on or about October 12, 2012.

Charboneau has failed to cite any grounds for considering his motion *ex parte*. A party to an action is allowed an opportunity to respond unless the motion is "one which may be heard *ex parte*." I.R.C.P. 7(b)(3)(A). It was Charboneau's duty to "state with

OBJECTION TO "EX-PARTE MOTION TO ALLOW PETITIONER TO SERVE  
DISCOVERY REQUESTS UPON THE RESPONDENT AND ATTORNEY OF  
RECORD"- Page 1

particularity the grounds" for his motion "including the number of the applicable civil rule." I.R.C.P. 7(b)(1). He has not, however, cited any rule, statute or other legal authority allowing him to exclude the State from being heard on his motion.<sup>1</sup>

Deciding Charboneau's Ex Parte Motion without giving the State an opportunity to present its argument is contrary to I.R.C.P. 7(b)(3). Parkside Schools, Inc. v. Bronco Elite Arts & Athletics, LLC, 145 Idaho 176, 178-79, 177 P.3d 390, 392-93 (2008). This Court cannot overlook the failure to comply with the duty of allowing a response as required by rule without compounding it. Id. at 179, 177 P.3d at 393. Rather, where a party files a motion and does not request a hearing or opportunity to brief the motion the trial court may only deny, and may not grant, that motion. Id. The State therefore requests that this Court DENY the Ex Parte Motion without prejudice to filing a motion for discovery that complies with the applicable rules.

In the alternative, the State requests that this Court deny the request for discovery on the merits. The decision to authorize discovery during post-conviction proceedings is left to the sound discretion of the district court. Murphy v. State, 143 Idaho 139, 148, 139 P.3d 741, 750 (Ct. App. 2006) (citations omitted). The court is not required to order discovery "unless necessary to protect an applicant's substantial rights." Id. (quoting Griffith v. State, 121 Idaho 371, 375, 825 P.2d 94, 98 (Ct. App. 1992)). "Fishing expedition' discovery should not be allowed. The UPCPA provides a forum for known grievances, not an opportunity to research for grievances." Id. (citing Charboneau v. State, 140 Idaho 789, 793, 102 P.3d 1108, 1112 (2004)).

---

<sup>1</sup> Charboneau has waived any oral argument or briefing in support of his Ex Parte Motion because he did not indicate on the face of that motion that he desired either of these things. I.R.C.P. 7(b)(3)(C).

OBJECTION TO "EX-PARTE MOTION TO ALLOW PETITIONER TO SERVE  
DISCOVERY REQUESTS UPON THE RESPONDENT AND ATTORNEY OF  
RECORD"- Page 2

Charboneau's discovery requests are mere fishing expeditions or simple wastes of time and expense. For example, although Charboneau's attorney is apparently the one with exclusive possession and control over the documents on which his post-conviction claims are based (referred to by Charboneau as "the packet"), he wishes the State to inform him of "each and every document found in the packet" (Interrogatory No. 3) and to provide a description of those documents (Interrogatory No. 10). He wants the State to "Identify if any other information was found in the Charboneau file" without specifying what file he is even referencing. (Interrogatory No. 6.) He wants the State to "describe the method in which Mr. Hiskett delivered the 'packet' to Mr. Charboneau," specifically whether he "hand[ed] the documents personally to Mr. Charboneau, or [mailed] them?" (Interrogatory No. 12.) Presumably Charboneau knows how he came into possession of the documents on which his claims are based. Charboneau requests the State to produce: "All documents generated by you or third parties as a result of the filing of Petitioner's original PETITION FOR POST CONVICTION RELIEF in this proceeding." (Request for Production of Documents 1.) This is at least Charboneau's fourth post-conviction action; obtaining all documents created by all persons involved in his original post conviction action is, quite frankly, a fool's errand. In addition, even though documents created by Charboneau's original post-conviction attorney, the court, and others are included in the request, they are clearly beyond the scope of the State's duty or ability to produce. Charboneau further requests "[a]ll documents generated by" the Jerome County Sherriff's Office, the Jerome County Prosecutor's Office, the Attorney General's Office, and the Idaho State Police, "related to the investigation and prosecution of Petitioner." (Request for Production of Documents Nos. 5-8.) This


OBJECTION TO "EX-PARTE MOTION TO ALLOW PETITIONER TO SERVE  
DISCOVERY REQUESTS UPON THE RESPONDENT AND ATTORNEY OF  
RECORD"- Page 3

request is a plain fishing expedition not limited to anything of even potential relevance to the current claims. Perhaps most telling, Charboneau requests production of the *original documents that his current claims are based on*. (Request for Production of Documents Nos. 9-12.) Because Charboneau based his claims on "the packet" that is already in his possession, this request is mystifying. It is clear that Charboneau is merely conducting a fishing expedition in which he hopes to get the Office of the Attorney General to investigate his claims for him.

The Office of the Attorney General has already cooperated with Charboneau in relation to this case. It has allowed inspection of its original prosecution file (save those documents it deems privileged, which it has submitted for *in camera* review). It has informally agreed to depositions of potential witnesses. This office stands ready to assist in the expeditious litigation of Charboneau's claims. It does not, however, have a duty to engage in the Herculean task of finding every document ever generated in relation to Charboneau.

Charboneau has made no showing that discovery is necessary to protect his rights. He is not entitled to a fishing expedition in hopes of finding evidence of his claims, yet that is what his discovery requests clearly entail. The State requests that this Court deny Charboneau's Ex Parte Motion.

DATED this 18th day of October 2012.



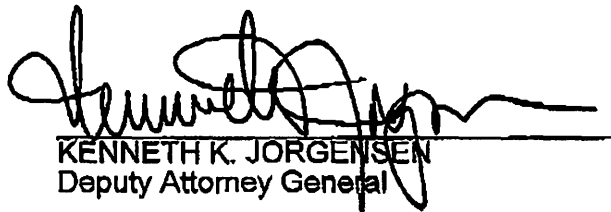
KENNETH K. JORGENSEN  
Deputy Attorney General

OBJECTION TO "EX-PARTE MOTION TO ALLOW PETITIONER TO SERVE  
DISCOVERY REQUESTS UPON THE RESPONDENT AND ATTORNEY OF  
RECORD"- Page 4

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of October 2012, I caused a true and correct copy of the foregoing OBJECTION TO "EX-PARTE MOTION TO ALLOW PETITIONER TO SERVE DISCOVERY REQUESTS UPON THE RESPONDENT AND ATTORNEY OF RECORD" to be placed in the United States mail, postage prepaid, addressed to:

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding Street West  
Twin Falls, ID 83301



KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/pm

OBJECTION TO "EX-PARTE MOTION TO ALLOW PETITIONER TO SERVE  
DISCOVERY REQUESTS UPON THE RESPONDENT AND ATTORNEY OF  
RECORD"- Page 5

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734 - 2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 OCT 22 AM 9 26

*Michelle Emerson*  
BY \_\_\_\_\_  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638


MOTION TO ALLOW PETITIONER TO  
SERVE DISCOVERY REQUESTS UPON  
THE RESPONDENT AND ATTORNEY OF  
RECORD

COMES NOW, the above named Petitioner, JAIME CHARBONEAU, by and through his attorney of record, Brian M. Tanner, and hereby requests this Court allow the Petitioner to serve formal discovery upon the Respondent and its attorney of record in conformity with the Idaho Rules of Civil Procedure.

Idaho Criminal Rule 57(b) states that the petition for post-conviction relief shall be filed by the clerk of the court as a separate civil case and be processed under the Idaho Rules of Civil Procedure except as otherwise ordered by the trial court; **provided the provisions for discovery in the Idaho Rules of Civil Procedure shall not apply to the proceedings unless and only to the extent ordered by the trial court.**

A hearing is requested on this motion.

Respectfully Submitted This 22<sup>nd</sup> of October, 2012..

  
\_\_\_\_\_  
Brian M. Tanner

Brian M. Tanner



## CERTIFICATE OF SERVICE

I, Brian Tanner, hereby certify that on the 22<sup>nd</sup> day of October, 2012, I caused a true and correct copy of the foregoing *Petitioner's Motion to Allow Petitioner to Serve Discovery Requests Upon the Respondent and Attorney of Record*, to be served to the following persons as follows:

Kenneth Jorgensen  
Deputy Attorney General  
Criminal Division  
PO Box 83720  
Boise, Idaho 83720  
Fax: (208) 854-8074

( ) U.S. Mail  
( ) Hand Delivered  
(☒) Faxed  
( ) Court Folder

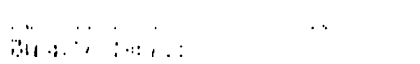
CERTIFICATE OF SERVICE

  
 Brian M. Tanner

I, Brian M. Tanner, hereby certify that on the 22<sup>nd</sup> day of October, 2012, I caused a true and correct copy of the foregoing *Petitioner's Motion to Allow Petitioner to Serve Discovery Requests Upon the Respondent and Attorney of Record*, to be served to the following persons as follows:

Kenneth Jorgensen  
Deputy Attorney General  
Criminal Division  
PO Box 83720  
Boise, Idaho 83720  
Fax: (208) 854-8074

( ) U.S. Mail  
( ) Hand Delivered  
(☒) Faxed  
( ) Court Folder

  
 Brian M. Tanner

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734 - 2383  
Idaho State Bar #7450

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 OCT 29 PM 3 56

*Michelle Emerson*

CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

MEMORANDUM IN SUPPORT OF  
MOTION TO ALLOW PETITIONER TO  
SERVE DISCOVERY

Comes Now, the Petitioner, by and through counsel of record, and hereby submits this memorandum in support of his request to serve discovery upon the Respondent and its counsel of record.

Idaho Criminal Rule 57(b) allows for discovery "to the extent ordered by the trial court."

"In the post-conviction relief setting, I.C.R. 57(b) limits discovery so that the prosecution will not be inundated with discovery requests from applicants who are either unaware of the proper methods and subject areas of discovery or are simply on fishing expeditions." *Aeschliman v. State*, 973 P.2d 749, 132 Idaho 397, 401 (Idaho App. 1999). To the contrary, the requests should specify the issues for which discovery is requested and why these issues are pertinent to the application. *Id.* at 402.

The Petitioner filed an ex-parte motion for request to serve discovery on October 12, 2012. The Respondent opposed the motion on October 18, 2012 and labeled the discovery requests a "fishing expedition."

The current application for post conviction relief is focused on and based upon a packet of documents discovered by Officer Mike Hiskett at the IDOC in Orofino, Idaho and delivered to the Petitioner on March 18, 2011. This packet contains valuable exculpatory evidence and also reveals a conspiracy to conceal this evidence. All of the interrogatories and requests for admission and production of documents relate to the "packet" discovered by Officer Hiskett.

Part of the Petitioner's burden is to establish the authenticity of these documents. For this reason, the Petitioner requests that the State inform him of "each and every document found in the packet." Counsel for the Petitioner wishes to establish a chain of custody and confirm that the packet presented to counsel is the same packet that Officer Hiskett found at the Idaho Department of Corrections. This is the basis for the interrogatory request.

In reference to Interrogatory No. 6, the Petitioner should perhaps just ask where the packet was discovered and if there is a "file" for Mr. Charboneau at the IDOC. The Petitioner will then request discovery of the file as it may reveal additional exculpatory information. The Petitioner will amend Interrogatory No. 6.

In reference to Interrogatory No. 12, this is a simple request. The intent is merely to confirm Mr. Charboneau's redaction of events in relation to how he received the packet.

In reference to the first request for production of documents, the Petitioner refers only to those investigations or documents generated by the State or third parties which relate to the post conviction application in "this proceeding." This does not include all documents generated by all persons in all of the prior post conviction proceedings.

In reference to requests for production of documents 5-8, the Petitioner, through its investigator, has contacted the Jerome County Sheriff's Office and the Jerome County Prosecutor's office and has not been able to find any of the original documents related to the first degree murder case. This includes witness statements, affidavits of probable cause and original police, detective, or prosecutor notes. The murder file might also include Mr. Charboneau's original letters to his counsel at the time, Golden Bennett, or the original 1989 Tira Arbaugh letter which is the subject of the current application for post-conviction relief. These documents are important because it allows the Petitioner to compare the facts in the file to the facts explained in Tira Arbaugh's letter. The original murder filed can be used to corroborate the contents of the letter and to investigate any possible wrong doing or concealment by Jerome county investigators and prosecutors as these allegations are also addressed in the Tira Arbaugh letter. As this was a first degree murder case, these documents should be available.

This request does not have to be a "Herculean task" as suggested by the state. If these documents are available, the Petitioner's investigator can travel to Jerome to review them and or make copies as necessary.

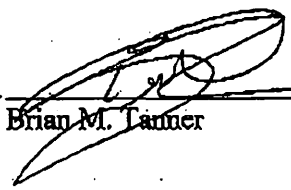
The Attorney General's Office has been gracious in providing several documents for in camera review. The Petitioner has seen the privilege log, but not the actual documents. It does not appear that any of the original witness statements, the 1989 Tira Arbaugh letter, Exhibit G of the Amended Application, or the original letters from Charboneau to Golden Bennet, which are found in Exhibits K and L in the Amended Application, are part of the privilege log.

The letters from Charboneau to Golden Bennett are important because they explain the Petitioner's version of events as they relate to what happened on the day of Marilyn's death. They are also important because his version of events coordinates with Tira Arbaugh's version of

events as described in her 1989 letter to J. Becker. Each version explains a shoot out, but neither version implies first degree premeditated murder. For this reason, the authenticity of both the 1989 letter from Tira Arbaugh and the letters from Charboneau to Golden Bennett, are crucial. These original letters are not found in the privilege log and the Petitioner has not yet been able to find them. Requests for production of documents 5-8 is designed to assist the Petitioner in finding original documents.

The documents which are part of the Amended Application are all copies, with the exception of the handwritten note from DeWayne Shedd. The Attorney General's office has stated that the Petitioner is requesting documents it already has. The Petitioner only has copies. For this reason it requests the original documents in order to confirm authenticity. The Petitioner has conducted its own investigations to the extent possible. As we have not yet been able to find the original documents, we are requesting them through the discovery process.

Respectfully Submitted This 29<sup>th</sup> day of October, 2012.

  
\_\_\_\_\_  
Brian M. Tanner

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
[ ISB No. 7450]

*Attorney for the Petitioner*

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2012  
2012 OCT 29 PM 3 56  
*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

Case No. CV. 2011-638

**NOTICE OF SERVICE**

**NOTICE IS HEREBY GIVEN** That Brian M. Tanner, Attorney of record for the above-named Petitioner, served a true and correct copy of **MEMORANDUM IN SUPPORT OF MOTION TO ALLOW PETITIONER TO SERVE DISCOVERY**, by fax upon the following attorney at the address below:

DATED this 29<sup>th</sup> day of October, 2012, to the following:

**KENNETH K. JORGENSEN**

Deputy Attorney General

P.O. Box 83720

Boise, ID 83720-0010

Dated this 29<sup>th</sup> of October, 2012.

TANNER LAW, PLLC.

*[Signature]*  
Tirza C. Delgado,  
Legal Assistant

NOTICE OF SERVICE - 1

BRIAN M. TANNER  
 Attorney at Law  
 137 Gooding St. W.  
 Twin Falls, ID 83301  
 Telephone: (208) 735-5158  
 Fascimile: (208) 734-2383  
 Idaho State Bar #7450

DISTRICT COURT  
 FIFTH JUDICIAL DIST  
 JEROME COUNTY IDAHO

2012 NOV 2 AM 8 51  
*Michelle Emerson*

BY *[Signature]*  
 CLERK  
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

\*\*\*\*\*

JAMIE DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO  
 Respondent.

Case No. CV. 2011-638

NOTICE OF HEARING

\*\*\*\*\*

YOU WILL PLEASE take notice that the Petitioner will bring on for hearing his  
 MOTION TO REQUEST DISCOVERY before The Honorable Judge Elgee, at the Jerome  
 County Courthouse, Jerome, Idaho, at the hour of 2:00 p.m. on the 16<sup>th</sup> day of November, 2012,  
 or as soon thereafter as counsel can be heard.

Dated this 1st day of November, 2012. TANNER LAW, PLLC

*[Signature]*  
 Tirza C. Delgado  
 Legal Assistant

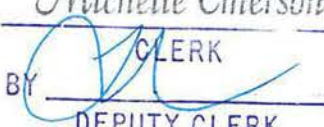


Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
[ ISB No. 7450]

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 NOV 2 AM 8 51

Michelle Emerson

BY  CLERK  
DEPUTY CLERK

*Attorney for the Petitioner*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

Case No. CV. 2011-638

**NOTICE OF SERVICE**

**NOTICE IS HEREBY GIVEN** That Brian M. Tanner, Attorney of record for the above-named Petitioner, served a true and correct copy of **NOTICE OF HEARING ON MOTION TO REQUEST DISCOVERY**, by fax upon the following attorney at the address below:  
DATED this 1st day of November, 2012, to the following:

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

Dated this 1st of November, 2012.

TANNER LAW, PLLC.

  
Tirza C. Delgado,  
Legal Assistant

NOTICE OF SERVICE - 1

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

**Civil Minute Entry  
Jaimi Charboneau vs State of Idaho  
CV 2011-638  
DATE: 11-16-12 @ 3:30 p.m.**

**Honorable Robert Elgee, District Judge presiding  
Sue Israel Court Reporter  
Shelly Creek, Minute Clerk  
Courtroom: Magistrate Court #1  
MATTER BEFORE THE COURT:**

2:00 This being the time and place set for: Motion to Request Discovery, court convenes.

Parties identified for the record.

Mr. Tanner is present in court

Mr. Jorgenson is present via telephone

2:01 Mr. Tanner: We provide documents to the court. Gave notice to Attorney General's office. State has made objections. Our goal is not to cause hardship to office. This case is about 17 months old. Attempting to find documents for good part of that. Discusses Rule 47. Request the court allow us to conduct discovery.

2:03 Mr. Jorgenson: State does not object to conducting reasonable discovery. Only way to get info. is to do deposition. Don't see anything in discovery request that ultimately are other than having me to out and investigate their case. This is just a request for this office to do investigation of their case and nothing else.

2:05 Mr. Tanner responds. We have not been able to find documents. Not lack of due diligence on our part. If State can't find it then put it in writing. We don't have original documents. We do plan on taking depositions of two officers. We don't want to use resources of the county. We feel IDOC and State has info. that will help accelerate theses requests.

2:08 Court: Will grant motion to allow petitioner to conduct discovery. State is the defendant here. Determine discovery is appropriate. Court will grant motion. Reads order to Mr. Jorgenson. Court signs order.

2:14 Court: I have received a box from Atty. General office - am going through it slowly. Good size box of documents.

Court in Recess.

End Minute Entry.

Attest: \_\_\_\_\_

Shelly Creek,  
Deputy Clerk



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 137 Gooding Street W.  
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 Idaho State Bar #7450

DISTRICT COURT  
 FIFTH JUDICIAL DIST  
 JEROME COUNTY IDAHO

2012 NOV 16 PM 4:00

*Michelle Emerson*

BY

CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
 IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

ORDER ALLOWING DISCOVERY  
 PURSUANT TO IDAHO CRIMINAL RULE  
 57(b).

THE COURT, having considered the Petitioner's Motion regarding discovery requests, and having found good cause herein, IT IS HEREBY ORDERED, pursuant to Idaho Criminal Rule 57(b), that the Petitioner be allowed to serve discovery upon the Respondent and the attorneys for the Respondent.

DATED This 16 day of November, 2012.



Honorable Judge Elgee

cc: Judge Elgee

Brian Tanner

Kenneth Jorgensen

**LAWRENCE G. WASDEN**  
Idaho Attorney General

**PAUL R. PANTHER**  
Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**  
Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083

**ORIGINAL**  
DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 DEC 14 PM 4 50

*Michelle Emerson*

BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV-2011-638

NOTICE OF SERVICE

**NOTICE IS HEREBY GIVEN** that Kenneth K. Jorgensen, Attorney for the Respondent, served a true and correct copy of the **RESPONSE TO PETITIONER'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS** by U.S. Mail Postage Prepaid upon the following attorneys at the addresses below:

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301

John C. Lyon  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616

DATED this 14 day of December 2012.

*[Signature]*  
Kenneth K. Jorgensen  
Deputy Attorney General

**LAWRENCE G. WASDEN**  
Idaho Attorney General

**PAUL R. PANTHER**  
Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**  
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**ORIGINAL**

DISTRICT COURT  
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2012 DEC 14 PM 4 50

*Michelle Emerson*

BY *[Signature]*  
CLERK  
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV-2011-638

NOTICE OF SERVICE

**NOTICE IS HEREBY GIVEN** that Kenneth K. Jorgensen, Attorney for  
the Respondent, served a true and correct copy of the **RESPONSE TO**  
**PETITIONER'S FIRST SET OF INTERROGATORIES** by U.S. Mail Postage  
Prepaid upon the following attorneys at the addresses below:

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301

John C. Lynn  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616

DATED this 7<sup>th</sup> day of December 2012.

*[Signature]*  
Kenneth K. Jorgensen  
Deputy Attorney General



ORIGINAL

**LAWRENCE G. WASDEN**

Idaho Attorney General

**PAUL R. PANTHER**

Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**

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DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 DEC 14 PM 4 50

BY  CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV-2011-638


NOTICE OF SERVICE

**NOTICE IS HEREBY GIVEN** that Kenneth K. Jorgensen, Attorney for the Respondent, served a true and correct copy of the **RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS** by U.S. Mail Postage Prepaid upon the following attorneys at the addresses below:

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301

John C. Lyon  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616

DATED this 14 day of December 2012.

  
Kenneth K. Jorgensen  
Deputy Attorney General

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Phone: 208.735.5158  
Fax: 208.734.2383  
ISB# 7450

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Michelle Emerson

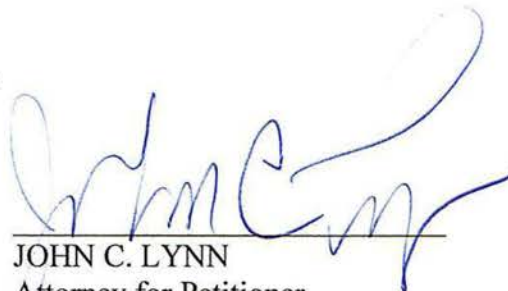
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BY

DEPUTY CLERK



DATED This 28 day of December, 2012.



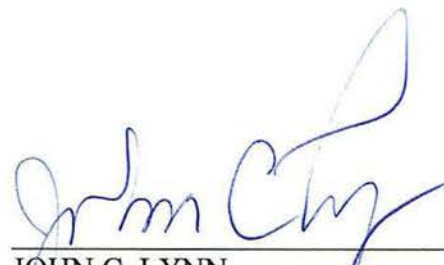
JOHN C. LYNN  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 28 day of December, 2012, I served a true and correct copy of the foregoing document, by hand-delivering the same, to:

KENNETH K. JORGENSEN  
Deputy Attorney General  
Special Prosecuting Attorney  
State of Idaho  
700 W. State St., 4<sup>th</sup> Floor  
Boise, ID 83720-0010

DATED This 28 day of December, 2012.



JOHN C. LYNN  
Attorney for Petitioner

JOHN C. LYNN  
Attorney at Law  
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Attorneys for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 DEC 31 PM 4 43

*Michelle Emerson*  
CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

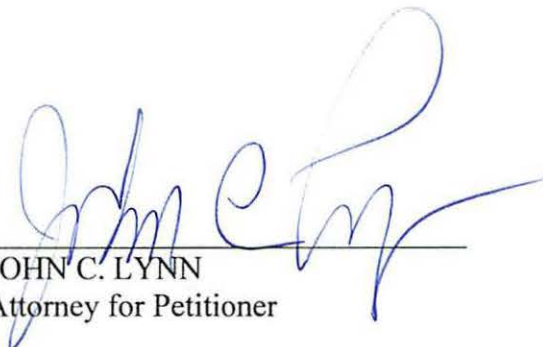
**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

|                       |   |                         |
|-----------------------|---|-------------------------|
| JAMI DEAN CHARBONEAU, | ) |                         |
|                       | ) |                         |
| Petitioner,           | ) | Case No. CV-2011-638    |
| v.                    | ) |                         |
|                       | ) | <b>MOTION TO COMPEL</b> |
| THE STATE OF IDAHO,   | ) |                         |
|                       | ) |                         |
| Respondent.           | ) |                         |
| _____                 | ) |                         |

COMES NOW The above-named Petitioner, by and through his counsel of record, and files this MOTION TO COMPEL proper answers and responses to certain INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS and REQUESTS FOR ADMISSIONS hereto served upon Respondent with this Court's permission. This

MOTION TO COMPEL is brought pursuant to the discovery rules under the Idaho Rules of Civil Procedure and specifically Rule 37 thereof. This MOTION is based upon the AFFIDAVIT OF JOHN C. LYNN IN SUPPORT OF MOTION TO COMPEL, and the AFFIDAVIT OF TOM BERRY IN SUPPORT OF MOTION TO COMPEL, together with the file herein. Petitioner requests oral argument on this MOTION.

DATED This 28 day of December, 2012.

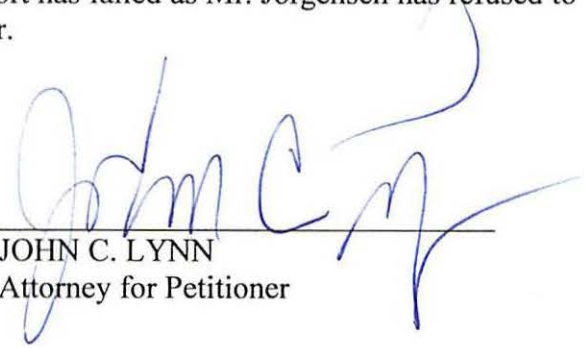


JOHN C. LYNN  
Attorney for Petitioner

CERTIFICATION

Pursuant to I.R.C.P. 37(a)(2), I hereby certify that I am one of the appointed attorneys representing the Petitioner herein and that my co-counsel, Brian Tanner, has made a good faith effort to confer with counsel for Respondent Kenneth Jorgensen, in an effort to secure the disclosures requested without court action. Said effort has failed as Mr. Jorgensen has refused to reconsider the State of Idaho's position on the matter.

DATED This 28 day of December, 2012.



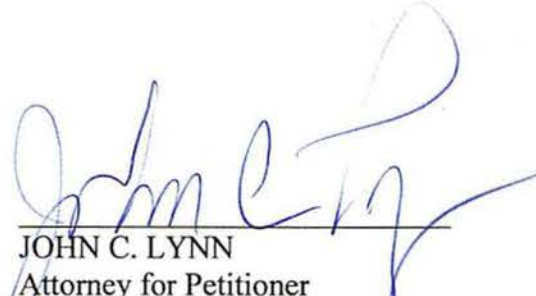
JOHN C. LYNN  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 28 day of December, 2012, I served a true and correct copy of the foregoing document, by hand-delivering the same, to:

KENNETH K. JORGENSEN  
Deputy Attorney General  
Special Prosecuting Attorney  
State of Idaho  
700 W. State St., 4<sup>th</sup> Floor  
Boise, ID 83720-0010

DATED This 28 day of December, 2012.



JOHN C. LYNN  
Attorney for Petitioner

JOHN C. LYNN  
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ISB#7450

Attorneys for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 DEC 31 PM 4 43

*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

|                       |   |                              |
|-----------------------|---|------------------------------|
| JAMI DEAN CHARBONEAU, | ) |                              |
|                       | ) |                              |
| Petitioner,           | ) | Case No. CV-2011-638         |
| v.                    | ) |                              |
|                       | ) | <b>MEMORANDUM IN SUPPORT</b> |
| THE STATE OF IDAHO,   | ) | <b>OF MOTION TO COMPEL</b>   |
|                       | ) |                              |
| Respondent.           | ) |                              |
|                       | ) |                              |

Petitioner, by and through his attorney of record, John C. Lynn, submits this MEMORANDUM IN SUPPORT OF MOTION TO COMPEL. The MOTION TO COMPEL is brought pursuant to the Idaho Rules of Civil Procedure (I.R.C.P.), and after co-counsel has made a good faith effort to secure the requested discovery responses without court action.

## INTRODUCTION

Petitioner filed the original PETITION FOR POST CONVICTION RELIEF in June of 2011. An AMENDED PETITION FOR POST CONVICTION RELIEF (“AMENDED PETITION”) was filed in October of 2011. The AMENDED PETITION in issue is based on a claim of newly-discovered evidence – a “packet” of written documentation that allegedly establishes a conspiracy by state actors to confiscate and conceal material evidence relating to Petitioner’s guilt in the underlying murder charge and his sentencings (AMENDED PETITION, paras. 8, 9). The most disturbing piece of newly-discovered evidence is a letter purportedly authored by Tira Arbaugh and sent to Judge Becker in September of 1989. This letter has been authenticated by a document examiner retained by Petitioner. This letter was allegedly confiscated and concealed by state actors, including Idaho Department of Corrections (“IDOC”) personnel, at the behest of agents from the Attorney General’s office (AMENDED PETITION, paras. 8-17). If true, the allegations in the AMENDED PETITION reflect a conspiracy to violate Petitioner’s constitutional due process rights, which would merit relief by this Court.

In July of 2011, this Court issued its NOTICE OF COURT’S INTENT TO DISMISS PURSUANT TO I.C. §19-4906. After briefing by the parties, this Court, on or about December 27, 2011, declined to dismiss these proceedings and found significant factual issues in dispute. In that light, this Court, on or about February 15, 2012, granted Petitioner’s MOTIONS for release of information and access to the prosecution files. Petitioner’s efforts in this regard are outlined in the AFFIDAVIT OF TOM BERRY IN SUPPORT OF MOTION TO COMPEL, filed herewith. The whereabouts of the original complete Jerome County Prosecutor and Sheriff files remains unknown to this date.



Furthermore, this Court denied the State's MOTION FOR SUMMARY JUDGMENT on or about March 8, 2011. In April of 2012, the State sought permissive appeal of this Court's ruling declining to dismiss the proceedings. Both this Court and the Idaho Supreme Court declined to accept the requested permissive appeal.

Most recently, Petitioner sought permission, again pursuant to I.C.R. 57, to serve proposed Interrogatories, Requests for Production of Documents and Requests for Admission. This Court granted the discovery requests on or about November 16, 2012. These requests were served and the State has now responded. The requests are marked as Exhibits A, B and C to AFFIDAVIT OF JOHN C. LYNN IN SUPPORT OF MOTION TO COMPEL ("LYNN AFFIDAVIT"). The adequacy of the State's ANSWERS and RESPONSES is before the Court on this MOTION TO COMPEL.

### **GENERAL LEGAL STANDARDS FOR CIVIL DISCOVERY**

I.R.C.P. 26 provides that a party may discover any matter that is relevant to any claim, issue or defense that is plead, regardless of which party raises the claim, issue or defense. The scope of discovery spans any information reasonably calculated to lead to the discovery of admissible evidence. For many years, the discovery rules, whether state or federal, have been accorded a broad and liberal treatment to affect their purpose of adequately informing the litigants in civil trials (see *Hebert v. Lando*, 441 U.S. 153, 176, 99 S.Ct. 1635, 60 L.Ed.2d 115 (1979)).

### **THE STATE'S DISCLOSURES**

As mentioned above, the Petitioner's discovery requests had been authorized by this Court prior to service on the State. All of these requests relate to specific factual issues before



the Court in these proceedings. Despite the specificity of the information sought, the State's disclosures, essentially, reveal nothing.

### INTERROGATORIES

The Petitioner's INTERROGATORIES focus on the "packet" and its discovery in March of 2011.<sup>1</sup> The State responded to these INTERROGATORIES by claiming "no knowledge" (Nos. 1, 2, 3, 4, 5, 7, 8) or that the information is "not within the control of the Office of the Attorney General (Nos. 9, 10, 12, 13). The State also contends that it "does not control the Department of Correction" (No. 14). Also, the "work product doctrine" is raised as a shield against disclosure (No. 14); this doctrine and the requirements necessary to assert will be discussed later in this briefing.

The contours of what is required by a responding party is, for the most part, the same under Idaho rule as Federal rule. The Attorney General (State or Federal) may answer interrogatories as an agent of the government; however, that agent must "furnish such information as is **available** to the party" (I.R.C.P. 33(a)(1); F.R.C.P. 33(b)). The "as is available" requirement necessitates a consultation "with other relevant sources so that the answer to the interrogatory contains "such information as is available to the party" (see *United States v. 58.16 Acres of Land, More or Less in Clinton County, State of Illinois*, F.R.D. 570, 572 (E.D. Ill. 1975)). Once a proper discovery request has been propounded, the courts "will not allow a party sentiently to avoid its obligations by filing misleading or evasive responses, or by failing to examine records within its control" (see *National Academy of Recording Arts & Sciences, Inc. v. On Point Events, L.P.*, 256 F.R.D. 678 (C.D. Col. 2009)(citations omitted)).

Here, it is painstakingly obvious that the State is being evasive; it apparently has not consulted with the IDOC as to the facts behind the disclosure of the packet on March 18, 2011.

---

<sup>1</sup> The reference to the "Charbonneau file" in INTERROGATORY NO. 6 was intended to mean the "packet".

The State responds to all propounded INTERROGATORIES concerning this issue with the incredulous response:

“At this time, the only persons known to undersigned ‘who has knowledge of or purports to have knowledge of the existence, preparation and custody of the packet’ is the Petitioner, Jaimi Dean Charboneau.”

(Lynn Affidavit, Ex. A, p. 2)

### **REQUESTS FOR PRODUCTION**

These themes of “no knowledge”, “no control” and “work product doctrine” are also asserted in the State’s responses to Petitioner’s REQUESTS FOR PRODUCTION OF DOCUMENTS (Nos. 1, 2, 3, 4, and 5). However, with respect to Requests for Production, the rules of discovery, whether State or Federal, require a responding party to provide the requested materials when it has the practical ability to obtain them.

Under Rule 34, control does not require that the party have legal ownership or actual physical possession of the documents at issue; rather, documents are considered to be under a party’s control when that party has the right, authority, **or practical ability to obtain the documents** from a non-party to the action.

*(Tiffany (NJ) LLC v. Andrew,*  
276 F.R.D. 143, 147 (S.D.N.Y. 2011)  
(citations omitted)  
(emphasis added)

Illustrative of the “practical ability to respond” requirement is *Soto v. City of Concord*, 162 F.R.D. 603 (N.D. Cal. 1995). The plaintiffs therein sought psychiatric evaluations of the defendant police officers in an “excessive force” case. The court granted the Motion to Compel, reasoning as follows:

The term “control” includes the “legal rights of the producing party to obtain documents from other sources upon demand”.

• • •

It is clear that the psychiatric evaluations conducted by the non-party physician were performed at the request of Defendant City of Concord in the course of the City of

Concord's hiring process. It seems inconceivable that the City lacks the ability to obtain such evaluations upon demand.

(*Id.* at pp. 619, 620)

Equally "inconceivable" here is the State's claim that it does not have the practical ability to obtain the requested documents dealing with the packet disclosure and its contents, as well as the original prosecution files.

The State's response to REQUEST NO. 5 and 6 is particularly confounding:

REQUEST NO. 5: All documents generated by the Jerome County Sheriff's Office relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

Response to Request No. 5: These documents are not in the custody or control of the Respondent. In addition, this Request is overly broad and burdensome because not every such document is reasonably calculated to lead to the discovery of admissible evidence. All documents in the original prosecution file have either been produced to the Petitioner or to the Court for review.

REQUEST NO. 6: All documents generated by the Jerome County Prosecutor's Office relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

Response to Request No. 6: The criminal case [sic] was not the prosecuting agency in the original criminal case. To undersigned's knowledge no documents responsive to this request exist. All documents in the original prosecution file have either been produced to the Petitioner or to the Court for review.

Curiously, the State responds to REQUEST NO. 5 by asserting that the documents are not in the custody or control of the Respondent. Yet, in the "Preliminary Objection" to the REQUESTS, the State concedes that it considers evidence held by the Jerome County Prosecutor's Office and Jerome County law enforcement ". . . to be within its control for purposes of discovery in this case". (*Id.*, p. 1). Marc Haws, Special Deputy Attorney General, did, in fact, prosecute Petitioner on the original murder charge in conjunction with the Jerome County Prosecutor's Office and Sheriff's Department. The Attorney General's Office

represented the people of Idaho in those proceedings; thus, the State's Response to REQUEST NO. 6 make no sense.

Petitioner has been given access to the Attorney General's files, but Petitioner has not been able to locate the Jerome County Prosecutor's complete file, nor the Jerome County Sheriff's file, which contained the **original** officer reports and witness statements (BERRY AFFIDAVIT, paras. 4-13). This Court has already authorized access to these files. It is apparent that the State has made no effort or reasonable inquiry as to where these files are located or what happened to them if they no longer exist.

### ADMISSIONS

The State's responses to Petitioner's REQUESTS FOR ADMISSION are equally deficient. The State denies all of these requests on the basis that "Respondent is without information". A response of this nature clearly violates the discovery process. I.R.C.P. 36(a) is quite specific on what is required in a response when a party claims insufficient knowledge:

**An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.**

(*Id.*)  
(emphasis added)

In other words, the rules require the answering party to set forth in detail why the responding party cannot truthfully admit or deny the request. Thus, a bare statement that the responding party is without information to admit or deny is insufficient.

Moreover, a response which fails to admit or deny a proper request for admission does not comply with the rule if the answering party has not, in fact, made a reasonable inquiry (see *Asea, Inc. v. Southern Pac. Transp. Co.*, 669 F.2d 1242 (9<sup>th</sup> Cir. 1981)). It is obvious here that the State made no inquiry as to the authenticity of written materials in the packet or to answer the

other specific requests in these ADMISSIONS. The troubling question begged here is why has not the State made any inquiry.

As with the other discovery requests, the State disregards the clear procedural rules and disrespects the spirit and intent of the discovery process itself. This process was intended to inform the litigants and it requires a good-faith effort to make a reasonable inquiry over the requested information.

### **THE STATE AS A PARTY**

The State contends that it lacks knowledge or control over state agencies, including the IDOC, and therefore cannot answer or respond to Petitioner's discovery. As mentioned above, Petitioner's INTERROGATORIES focus on how and under what circumstances the "packet" of materials was given to Petitioner. According to the State, if any state agency conducted an investigation of the "packet" disclosure, such an investigation "would be beyond the control of the Office of the Attorney General and therefore beyond the scope of discovery" (see RESPONSE TO INTERROGATORY NO. 1). This position is asserted even though the IDOC, like other State agencies, is represented by the Office of the Attorney General. Notwithstanding this "separation of agencies" position, the State of Idaho was the party that prosecuted Petitioner in the original prosecution (see Idaho Code §19-104). Usually, the elected county prosecutor fulfills the role of prosecutor on behalf of the State. In this case, a Special Prosecutor from the Attorney General's Office, Marc Haws, prosecuted the case for the State (see Idaho Code §31-2603(b)). Regardless of what office represented the State, the State is still the party in a criminal prosecution as well as post-conviction proceedings.

Clearly, the IDOC is an agency of the State – not a third party. It is one of the twenty agencies within the executive department of Idaho State government (Art. IV, Idaho State

Constitution). The allegations here forming the basis for relief involve acts by employees of the IDOC, as well as employees of the Attorney General's Office and Jerome County. The State's counsel has a duty to represent those state agencies and actors over allegations which give rise to Petitioner's claims. Pursuant to Idaho Code §67-1401, the duties of the Attorney General are as follows:

To perform all legal services for the state and to represent the state and all departments, agencies, offices, officers, boards, commissions, institutions and other state entities, in all courts and before all administrative tribunals or bodies of any nature.

It is apparent that the State seeks to avoid providing information to Petitioner that is known to state actors. The State is treating one of its agencies, the IDOC, as if it were a third party. It is not a third party.

*Tri-State Supply Corp. v. United States*, 226 F.R.D. 118 (D.D.C. 2005) discusses the scope of the government's responsibility on this point. The plaintiff there sought information from multiple departments and agencies, which may have been involved in the alleged wrongdoing of the government. The United States objected. The federal district court disagreed with the objection, reasoning as follows, which is equally applicable here:

The parties dispute whether plaintiff can seek discovery about government agencies other than the Customs Service and Commercial Litigation Branch of the Justice Department's Civil Division, which were identified in Tri-State's administrative claim, supplement and amendment.

• • •

**In the court's opinion, plaintiff should be allowed to use discovery to ascertain facts underlying its complaint, to determine whether other individuals acted illegally, and to flesh out its case. Even if these individuals were not named in the complaint and cannot be the basis of the United States' liability, it would be improper for the court to curtail discovery regarding their actions because their actions may be relevant to the actions of Bethel, Gibbs, Batt and others whose actions *may* be imputed to the United States. Additionally, there may be other employees who, in the court's opinion, are investigative or law enforcement officers and whose actions may also serve as the predicate for plaintiff's relief. On this record, however, it is impossible to determine whether that will be the case, and it is inappropriate to limit discovery to the three or four Customs employees defendant has identified.**

(*Id.*, pp. 127-129)  
(emphasis added)

The discovery rules are quite explicit as to the State's duty to respond on behalf of all of its agencies. For example, Rule 33(a) states:

(1) Use of Interrogatories. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

Once the State is served, it is incumbent on the State (and all corporate entities) to select someone who can furnish the requested information if it is available. In this case, the governmental agent is the Attorney General's Office, by and through Deputy Attorney General Kenneth Jorgensen. As mentioned above, the responding agent must provide all relevant information available to it. Even if this Court were to deem IDOC a non-party, the responding agent must still provide information that it has the practical ability to obtain (see *Soto*, supra).

In short, the discovery rules allow a party to obtain relevant, readily available information and/or documents within the "possession, custody or control" of the opposing party (I.R.C.P. 34(a)). This phrase is in the disjunctive and only one of the enumerated requirements need be met. The IDOC is not an autonomous branch of State government, but is part of the executive branch as is the Office of the Attorney General who represents all of these executive departments. Moreover, the IDOC is inter-related to the prosecution of Petitioner and these post-conviction proceedings by virtue of the allegations that its agents, together with Deputy Attorney Generals, conspired to intercept and conceal highly relevant evidence as to Petitioner's guilt in that prosecution. To allow the State to invoke its claim of no knowledge, control or custody over the IDOC's role in this alleged conspiracy would be an affront to the discovery process.



Furthermore, the State's assertion that it lacks knowledge is inconsistent with the State's ANSWER filed in October of 2012, which denied the critical allegations involving the conspiracy between various state and county actors (ANSWER, para. 3). Under I.R.C.P. 8(b), a party may assert that it is "without knowledge or information sufficient to form a belief as to the truth of averment". The State did not make any such claim then, but does now in responding to discovery.

Also, I.R.C.P. 26(f) declares that the signature of the attorney or party constitutes a certification that to the best of signer's knowledge, information and belief **formed after a reasonable inquiry**, the response is consistent with the rules and made in good faith. The State made no effort at the I.C.R. 57 hearing held November 16, 2012, to contest Petitioner's discovery requests on the basis that it had no control over the IDOC or Jerome County. It is disingenuous to raise this claim now when the purpose of a Rule 57 hearing is for the State to articulate such broad-based objections that are now before the Court. As a result of the State's "maneuvering", even more delay has ensued, which is clearly only a disadvantage to Petitioner.

### **WORK PRODUCT**

The State has asserted the "work product doctrine" as a shield against disclosure in many of its discovery responses (INTERROGATORY NOS. 2 and 14; REQUESTS FOR PRODUCTION NOS. 1, 2 and 3). The I.R.C.P. is very explicit as to what is requested for a party to assert the "work product" privilege:

Rule 26(b)(5)(A). Privileged information withheld.

When a party withholds information otherwise discoverable under these rules by claiming it is privileged or subject to protection as trial preparation material, **the party shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.**

(emphasis added)

The State has not met those requirements. No privilege log has been submitted. There is no way for Petitioner or this Court to discern whether any documents or information sought is subject to the privilege. The failure to do so is indicative of either a lack of familiarity with the civil discovery rules or a lack of good faith over the State's responsibility with respect to discovery. Considering all the deficiencies cited above, it is apparent that the State has no intention of meeting its obligations to adequately respond to Petitioner's request for information.

### **SANCTIONS**

Given the State's answers and responses to the discovery requests, Petitioner has been required to file a MOTION TO COMPEL for the reasons cited above. In the event this court grants the MOTION, the imposition of sanctions is appropriate under I.R.C.P. 37(a). The State's responses are evasive, incomplete and do not fulfill the requirements of the discovery rules. The responses, which assert a lack of control or knowledge of matters within other State agencies, are specious on its face. The State of Idaho is the party-Respondent, as are all of its agencies and state actors who are directly involved in Petitioner's allegations. The Office of the Attorney General is not the Respondent here – it is the attorney for the Respondent. It is also the attorney for all State agencies.

Therefore, this Court should order the State to properly answer all INTERROGATORIES and properly respond to all REQUESTS FOR PRODUCTION in compliance with the I.R.C.P. This Court should order that these amended answers and responses be served no later than ten (10) days from the issuance of the Order as the delay and prejudice to Petitioner caused by the State's deficient discovery responses only serves the interest of the State.

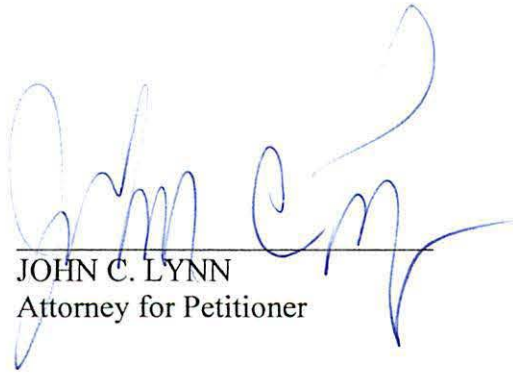
Normally, the imposition of fees and costs would be appropriate in situations such as these. However, Petitioner's counsel is paid for by Jerome County, so any award of fees and costs should be paid to Jerome County as a reimbursement for the fees and costs paid to counsel for this MOTION.

Finally, with respect to the REQUESTS FOR ADMISSIONS, the ANSWERS are so frivolous that this Court should deem them admitted. It has the power to do so under I.R.C.P. 36(a) if the Court finds that the State has "not complied with the requirements of this rule". This Rule specifically states that a party may not assert a lack of information and knowledge as a reason for a failure to admit unless a reasonable inquiry of readily obtainable information has been made. Over eighteen (18) months has now passed since Officer Hiskett gave the "packet" to Petitioner – this is more than enough time for a reasonable inquiry as to the contents of the "packet" and the other information sought by Petitioner.

### CONCLUSION

For the reasons stated above, Petitioner respectfully requests this Court to grant an order compelling proper answers and responses to the discovery requests in issue and enter appropriate sanctions.

DATED This 28 day of December, 2012.



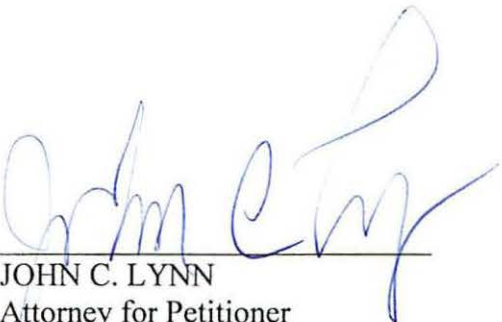
JOHN C. LYNN  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 28 day of December, 2012, I served a true and correct copy of the foregoing document, by hand-delivering the same, to:

KENNETH K. JORGENSEN  
Deputy Attorney General  
Special Prosecuting Attorney  
State of Idaho  
700 W. State St., 4<sup>th</sup> Floor  
Boise, ID 83720-0010

DATED This 28 day of December, 2012.



JOHN C. LYNN  
Attorney for Petitioner

JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr.  
Suite 240  
Eagle, ID 83616  
Phone: 208.685.2333  
Email: johnlynn@fiberpipe.net  
ISB #1548

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Phone: 208.735.5158  
Fax: 208.734.2383  
ISB# 7450

Attorneys for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2012 DEC 31 PM 4 43  
*Michelle Emerson*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

JAMI DEAN CHARBONEAU, )  
)  
Petitioner, )  
v. )  
)  
THE STATE OF IDAHO, )  
)  
Respondent. )  
\_\_\_\_\_ )

Case No. CV-2011-638

**AFFIDAVIT OF JOHN C. LYNN  
IN SUPPORT OF  
MOTION TO COMPEL**

STATE OF IDAHO )  
:ss  
State of Idaho )

I, JOHN C. LYNN, having been first duly sworn upon oath, depose and say as follows:

1. I am a licensed attorney and have been appointed by this Court as co-counsel for the above-named Petitioner.

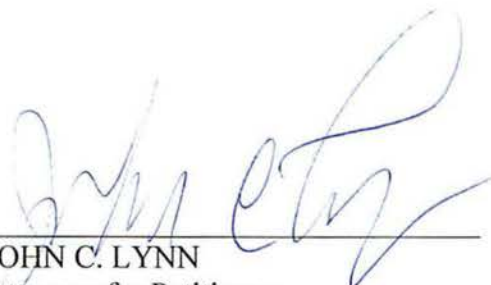
2. The following Exhibits A, B and C, attached hereto, are true and correct copies of the originals:

Exhibit A – Response to Petitioner’s First Set of Interrogatories

Exhibit B – Response to Petitioner’s First Set of Requests for Production of Documents

Exhibit C – Response to Petitioner’s First Set of Requests for Admissions

DATED This 19 day of December, 2012.

  
JOHN C. LYNN  
Attorney for Petitioner

SUBSCRIBED AND SWORN To before me, a Notary Public in and for the State of Idaho, this 19th day of December, 2012.



  
Notary Public for Idaho  
My Commission Expires: 9/26/17

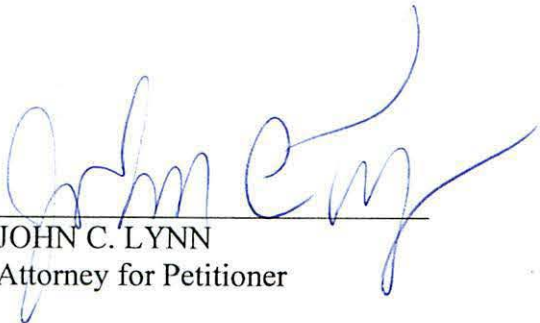


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 28 day of December, 2012, I served a true and correct copy of the foregoing document, by hand-delivering the same, to:

KENNETH K. JORGENSEN  
Deputy Attorney General  
Special Prosecuting Attorney  
State of Idaho  
700 W. State St., 4<sup>th</sup> Floor  
Boise, ID 83720-0010

DATED This 28 day of December, 2012.

  
\_\_\_\_\_  
JOHN C. LYNN  
Attorney for Petitioner





seeks discovery or information from Officer Hiskett it will have to be in the form of deposing him.

INTERROGATORY NO. 1: With respect to the alleged "packet" of documents given to Petitioner on March 18, 2011, as set forth in the AMENDED PETITION filed herein:

(a) Please identify the name, address, telephone number of each and every person known to you who has knowledge of or purports to have knowledge of the existence, preparation and custody of the "packet";

(b) Please identify the name, address, telephone number of each and every person known to you who has knowledge of or purports to have knowledge of any inquiry or investigation relating to the "packet" or any item, including document or writing, relating to the "packet" allegedly contained in the "packet" or written upon any such document in the "packet".

Response to Interrogatory No. 1: (a) At this time the only person known to undersigned "who has knowledge of or purports to have knowledge of the existence, preparation and custody of the 'packet'" is the Petitioner, Jaimi Dean Charboneau. All others, to undersigned's knowledge, are merely familiar with Charboneau's pleadings. Undersigned is unaware of any person who saw the documents Charboneau alleges were delivered to him in the "packet" prior to Charboneau making his allegations.

(b) Respondent's investigation into Charboneau's allegations is protected from disclosure by the work product privilege. Undersigned assumes that Petitioner is aware of investigations conducted by his own agents as set forth in documents filed in this case. Undersigned is unaware of any other investigations by any other persons or entities; such would be beyond the control of the Office of the Attorney General and therefore beyond the scope of discovery.

INTERROGATORY NO. 2: With respect to the persons you have identified in your answer to INTERROGATORY NO. 1, please state the general nature of the facts to which they have knowledge.

Response to Interrogatory No. 2: See Response to Interrogatory No. 1.

INTERROGATORY NO. 3: With respect to the "packet" please identify each and every document found in the packet.

Response to Interrogatory No. 3: Undersigned has no knowledge of the contents of the "packet" other than the allegations by Charboneau.

INTERROGATORY NO. 4: With respect to the "packet" please describe in narrative form the circumstances which led to its discovery.

Response to Interrogatory No. 4: Undersigned has no knowledge of the circumstances which led to the alleged discovery of the "packet" other than the allegations by Charboneau.

INTERROGATORY NO. 5: With respect to the "packet" please identify where the packet was located upon discovery. Please include information regarding the room in which it was found and the location at the prison where it was found.

Response to Interrogatory No. 5: Undersigned has no knowledge of whether the packet" was "discovered," where the "packet" was discovered, or any other circumstances surrounding the alleged discovery other than the allegations by Charboneau.

INTERROGATORY NO. 6: Please also identify if any other information was found in the Charboneau file that has not yet been revealed to the Petitioner and his counsel.

Response to Interrogatory No. 6: This interrogatory is vague because it does not identify what the "Charboneau file" is. Undersigned assumes it refers to the file related to the original criminal prosecution. Respondent has provided full discovery in relation to that file.

INTERROGATORY NO. 7: Please identify the person or person(s) [sic] who discovered the packet on March 18, 2011.

Response to Interrogatory No. 7: Undersigned has no knowledge regarding whether the "packet" was "discovered," much less who "discovered" the "packet," other than the allegations by Charboneau.

INTERROGATORY NO. 8: [a] Please describe how the "packet" and the material found within the packet arrived at the prison in Orofino, Idaho and in Mr. Charboneau's file[.] [b] Please describe the process by which any information and documents are placed in an inmate file at the prison in Orofino, Idaho. [c] Please describe the office personnel involved in the transfer of mail and documents to the personal inmate files at the prison in Orofino, Idaho.

Response to Interrogatory No. 8: [a] Undersigned has no knowledge of how the contents of the "packet" arrived at any location other than the allegations by Charboneau.

[b] Objection: this information is not within the control of the Office of the Attorney General and is therefore not properly requested in discovery. In addition, this interrogatory is overly broad and onerous because it is not narrowed to the circumstances relevant to the allegations at hand.

[c] Objection: this information is not within the control of the Office of the Attorney General and is therefore not properly requested in discovery. In addition, the interrogatory is overly broad and onerous because it is not limited to time and circumstances relevant to this case.

INTERROGATORY NO. 9: Please state whether any inmates can or do have access to the inmate files, including Mr. Charboneau's file where the "packet" was found.

Response to Interrogatory No. 9: Objection: this information is not within the control of the Office of the Attorney General and is therefore not properly requested in discovery. In addition, it is overly broad and onerous because it is not limited to time and circumstances relevant to this case.

INTERROGATORY NO. 10: Please state what information or documents Mr. Hiskett reviewed or observed in Mr. Charboneau's file located at the prison in Orofino, Idaho.

Response to Interrogatory No. 10: Objection: this information is not within the control of the Office of the Attorney General and is therefore not properly requested in discovery. Mr. Hiskett is a potential witness in this case; this information is more properly sought through his deposition.

INTERROGATORY NO. 11: Please describe what documents Mr. Hiskett delivered to Mr. Charboneau on March 18, 2011.

Response to Interrogatory No. 11: The only information currently available to the undersigned in response to this interrogatory is contained in the pleadings and allegations of the Petitioner.

INTERROGATORY NO. 12: Please describe the method in which Mr. Hiskett delivered the "packet" to Mr. Charboneau on March 18, 2011. Did he hand the documents personally to Mr. Charboneau, or did he mail them?

Response to Interrogatory No. 12: Objection: this information is not within the control of the Office of the Attorney General and is therefore not properly requested in discovery. Mr. Hiskett and Charboneau are the only witnesses to any transfer of documents that occurred on March 18, 2011, and neither are under the control of the Office of the Attorney General. This information is more properly sought through depositions of the witnesses.

INTERROGATORY NO. 13: Was Mr. Hiskett physically present when Mr. Charboneau received and reviewed the "packet" [?]

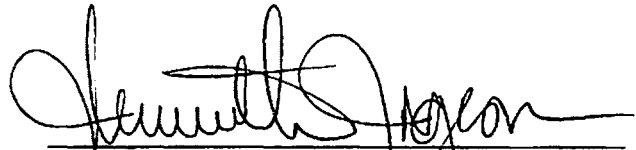
Response to Interrogatory No. 13: Objection: this information is not within the control of the Office of the Attorney General and is therefore not properly requested in discovery. Mr. Hiskett and Charboneau are the only potential witnesses known to undersigned of any review of the "packet" and neither are under the control of the Office

of the Attorney General. This information is more properly sought through depositions of the potential witnesses.

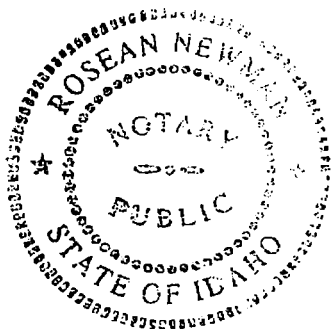
INTERROGATORY NO. 14: Please state whether the Respondent or counsel for Respondent or the Idaho Department of Corrections has conducted its own evaluation or review of the authenticity of the emails purportedly written by and between Lieutenant Unger and Dewayne Shedd, which are parts of the Petitioner's Amended Petition, Exhibit A.

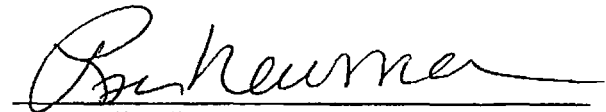
Response to Interrogatory No. 14: Objection: The Office of the Attorney General does not control the Department of Correction and therefore the interrogatory is overly broad and seeks matters not discoverable to the extent it seeks information about that Department. Whatever investigation conducted thus far, if any, by the Officer of the Attorney General, is protected by the work product doctrine.

DATED this 7<sup>th</sup> day of December 2012.

  
KENNETH K. JORGENSEN  
Deputy Attorney General

Subscribed and sworn to before me this 7<sup>th</sup> day of December 2012.



  
Notary Public  
Residing in Boise, Idaho  
My Commission Expires on 3/10/2017

## CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 7<sup>th</sup> day of December 2012, I caused to be served a true and correct copy of the foregoing Response to Petitioner's First Set of Interrogatories to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☒ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile

John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355

☒ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile

  
Rosean Newman, Legal Secretary



Idaho Attorney General

Chief, Deputy Attorney General  
Criminal Law Division

Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                        |   |                                  |
|------------------------|---|----------------------------------|
| JAIMI DEAN CHARBONEAU, | ) |                                  |
|                        | ) |                                  |
| Petitioner,            | ) | <b>Case No. CV-2011-638</b>      |
|                        | ) |                                  |
| vs.                    | ) | <b>RESPONSE TO PETITIONER'S</b>  |
|                        | ) | <b>FIRST SET OF REQUESTS FOR</b> |
| THE STATE OF IDAHO,    | ) | <b>PRODUCTION OF DOCUMENTS</b>   |
|                        | ) |                                  |
| Respondent.            | ) |                                  |

Preliminary objection: The Office of the Attorney General does not control or supervise any other department or branch of government, nor any county or local government office, department or agency. Because the Office of the Attorney General is appointed as a special Jerome County prosecutor, it considers evidence held by the Jerome County Prosecutor's Office and Jerome County law enforcement involved in the criminal investigation of Charboneau to be within its control for purposes of discovery in this case. For purposes of all responses here, Respondent does not have control over

RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS (CHARBONEAU), Page 1

the Department of Correction, the Idaho State Police (except to the extent it was involved in the criminal investigation), the district courts, the Jerome County Sheriff's Office(except to the extent it was involved in the criminal investigation), the law office or estate of Golden Bennett, or other "third parties." Discovery from the Department of Correction and other governmental or private entities, and their current or former employees, will have to be pursued by means other than discovery directed at the Office of the Attorney General in this case. These responses reflect the non-privileged documents currently held by the Office of the Attorney General.

REQUEST NO. 1: All documents generated by you or third parties as a result of the filing of Petitioner's original PETITION FOR POST CONVICTION RELIEF in this proceeding.

Response to Request No. 1: First objection: Respondent objects to this Request to the extent it seeks production of documents protected by the work product privilege. Second objection: Respondent does not control "third parties" who may have generated documents "as a result of" the filing of the instant case (except as noted in the general objection above). Third objection: The Request is overly broad and burdensome because it literally requests all documents generated by any person or entity as a result of the filing of this case, and not every such document is reasonably calculated to lead to the discovery of admissible evidence. Respondent has already provided to Petitioner all documents not subject to these objections.

REQUEST NO. 2: All documents relating to any inquiry or investigation of the alleged "packet" of documents given to Petitioner on March 18, 2011, as set forth in the AMENDED PETITION filed herein.

Response to Request No. 2: Respondent objects to this Request to the extent it seeks production of documents protected by the work product privilege. All documents not subject to this privilege have been produced.

REQUEST NO. 3: All documents relating to any inquiry or investigation of any item, including any document or writing, contained in the "packet" or written upon any such document in the "packet".

Response to Request No. 3: Respondent objects to this Request to the extent it seeks production of documents protected by the work product privilege. All documents not subject to this privilege have been produced.

REQUEST NO. 4: All documents relating to the policy and practice of the inspecting and/or seizing of inmate correspondence in effect at the Idaho Department of Corrections ("IDOC") during Petitioner's incarceration at the IDOC.

Response to Request No. 4: Objection: These documents are not in the custody or control of the Office of the Attorney General.

REQUEST NO. 5: All documents generated by the Jerome County Sheriff's Office relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

Response to Request No. 5: These documents are not in the custody or control of the Respondent. In addition, this Request is overly broad and burdensome because not every such document is reasonably calculated to lead to the discovery of admissible evidence. All documents in the original prosecution file have either been produced to the Petitioner or to the Court for review.

REQUEST NO. 6: All documents generated by the Jerome County Prosecutor's Office relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

Response to Request No. 6: The criminal case was not the prosecuting agency in the original criminal case. To undersigned's knowledge no documents responsive to this request exist. All documents in the original prosecution file have either been produced to the Petitioner or to the Court for review.

REQUEST NO. 7: All documents generated by Attorney General's Office for the State of Idaho relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

Response to Request No. 7: All documents in the original prosecution file have either been produced to the Petitioner or to the Court for review. Undersigned is unaware of any other documents that fall within the purview of this request.

REQUEST NO. 8: All documents generated by the Idaho State Police relating to the investigation and prosecution of Petitioner for which he is presently incarcerated.

Response to Request No. 8: All documents in the original prosecution file have either been produced to the Petitioner or to the Court for review. Undersigned is unaware of the existence of any other documents subject to this request.

REQUEST NO. 9: Please provide the original Tira Arbaugh letter dated September 6, 1989, which is addressed to Judge Becker and is attached as a copy to the Amended Petition as Exhibit G.

Response to Request No. 9: No such document is in the custody or control of the Respondent.

REQUEST NO. 10: Please provide the original envelope, which is post stamped September 7, 1989 and addressed to Judge Becker from Tira Arbaugh, the copy of which is attached to the Amended Petition as Exhibit F.

Response to Request No. 10: No such document is in the custody or control of the Respondent.

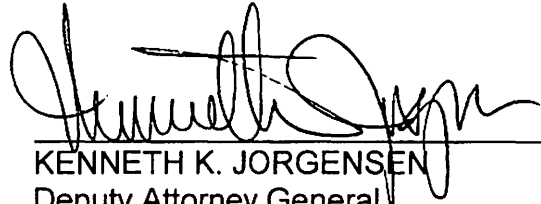
REQUEST NO. 11: Please provide the original letter written to Golden Bennett from Jaime Charboneau dated August 10, 1984, which is attached as a copy to the Amended Petition, Exhibit K.

Response to Request No. 11: No such document is in the custody or control of the Respondent.

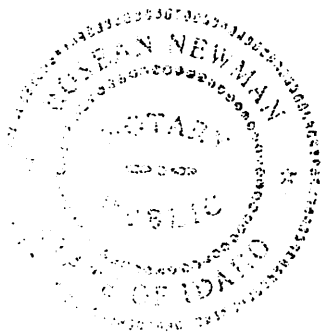
REQUEST NO. 12: Please provide the original letter to Golden Bennett from Jaimi Charboneau dated August 13, 1984, which is attached as a copy to the Amended Petition, Exhibit L.

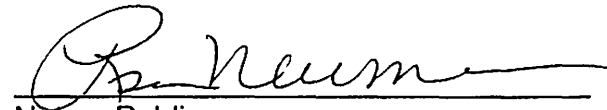
Response to Request No. 12: No such document is in the custody or control of the Respondent.

DATED this 7<sup>th</sup> day of December 2012.

  
KENNETH K. JORGENSEN  
Deputy Attorney General

Subscribed and sworn to before me this 7<sup>th</sup> day of December 2012.



  
Notary Public  
Residing in Borser, Idaho  
My Commission Expires on 3/10/2017

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of December 2012, I caused to be served a true and correct copy of the foregoing Response to Petitioner's First Set of Requests for Production of Documents to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☒ U.S. Mail postage prepaid  
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John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355

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Rosean Newman, Legal Secretary

**LAWRENCE G. WASDEN**  
Idaho Attorney General

**PAUL R. PANTHER**  
Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**  
Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                        |   |                                  |
|------------------------|---|----------------------------------|
| JAIMI DEAN CHARBONEAU, | ) |                                  |
|                        | ) |                                  |
| Petitioner,            | ) | <b>Case No. CV-2011-638</b>      |
|                        | ) |                                  |
| vs.                    | ) | <b>RESPONSE TO PETITIONER'S</b>  |
|                        | ) | <b>FIRST SET OF REQUESTS FOR</b> |
| THE STATE OF IDAHO,    | ) | <b>ADMISSIONS</b>                |
|                        | ) |                                  |
| Respondent.            | ) |                                  |

---

**COMES NOW**, Kenneth K. Jorgensen, Deputy Attorney General and Special Prosecuting Attorney for Jerome County and files this Response to Petitioner's First Set of Requests for Admissions pursuant I.R.C.P. 36.

Preliminary objection: The Office of the Attorney General does not control or supervise any other department or branch of government, nor any county or local government office, department or agency. Because the Office of the Attorney General is appointed as a special Jerome County prosecutor, it considers evidence held by the Jerome County Prosecutor's Office and Jerome County law enforcement involved in the criminal investigation of Charboneau to be within its control for purposes of discovery in this case. Discovery from the Department of Correction and other governmental

**RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS**  
**(CHARBONEAU), Page 1**

EXHIBIT C



entities, and their current or former employees, will have to be pursued by means other than discovery directed at the Office of the Attorney General in this case. These responses reflect the non-privileged information currently held by the Office of the Attorney General.

REQUEST NO. 1: With respect to each item (Exhibit A through G) given to the Petitioner on March 18, 2011, in the "packet", as alleged in the AMENDED PETITION filed herein, please:

- (a) admit that each item is an authentic original or an authentic copy of the original;
- (b) admit the [sic] each item was contained in the "packet" of documents.

Response to Request No. 1: (a) Respondent is without information to admit or deny the authenticity of the documents subject to this request for admission; it is therefore **DENIED**.

(b) Respondent is without information to admit or deny the contents of the alleged packet; this request for admission is therefore **DENIED**.

REQUEST NO. 2: With respect to the allegations in the AMENDED PETITION that Dwayne Shedd and William Unger intercepted, seized and/or confiscated Petitioner's correspondence, and mail and other materials in the "packet", please:

(a) admit Dwayne Shedd did, in fact, intercept, seize and/or confiscated the following items found in the "packet";

- i. Exhibit C
- ii. Exhibit D
- iii. Exhibit E
- iv. Exhibit F
- v. Exhibit G

(b) admit that Dwayne Shedd authored the portions of Exhibit A and Exhibit B which, purportedly, were sent to Dwayne Shedd;

(c) admit that Dwayne Shedd, prior to March 18, 2011, had intercepted inmate mail and/or correspondence;

(d) admit that Dwayne Shedd was one of the IDOC employees who had intercepted inmate mail and/or correspondence in the Idaho Federal District Court Case, entitled *Gomez v. Vernon, et al*, Case No. CV910299;

(e) admit that William Unger did, in fact, author the portion of Exhibit A which, purportedly, was sent by William Unger.

Response to Request No. 2: (a) Respondent is without information to admit or deny the actions of Dwayne Shedd; this request for admission is therefore **DENIED**.

(b) Respondent is without information to admit or deny the actions of Dwayne Shedd; this request for admission is therefore **DENIED**.

(c) Respondent is without information to admit or deny the actions of Dwayne Shedd; this request for admission is therefore **DENIED**.

(d) Objection: This request for admission is not reasonably calculated to lead to the discovery of admissible evidence. To the extent such may be discoverable, Respondent is without information to admit or deny the actions of Dwayne Shedd; this request for admission is therefore **DENIED**.

(e) Respondent is without information to admit or deny the actions of Dwayne Shedd; this request for admission is therefore **DENIED**.

REQUEST FOR ADMISSION NO. 3: Please admit that Officer Mike Hiskett discovered the "packet" of documents on March 18, 2011.

Response to Request for Admission No. 3: Respondent is without information to admit or deny whether Officer Mike Hiskett discovered the "packet" as alleged by Charboneau; this request for admission is therefore **DENIED**.


REQUEST FOR ADMISSION NO. 4: Please admit that Officer Mike Hiskett delivered the "packet" to Mr. Charboneau on the same day.

Response to Request for Admission No. 4: Respondent is without information to admit or deny whether Officer Mike Hiskett delivered to Charboneau any documents in the "packet" as alleged by Charboneau; this request for admission is therefore **DENIED**.

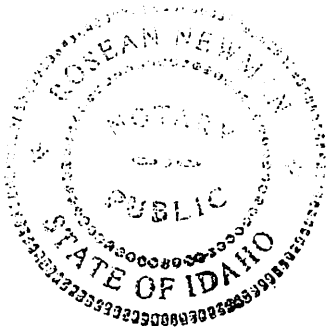
**RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS  
(CHARBONEAU), Page 3**

Response to Request for Admission No. 5: Respondent is without information to admit or deny whether Officer Mike Hiskett discovered the “packet” as alleged by Charboneau, and is further without information as to whether inmates had access to any such area; this request for admission is therefore **DENIED**.

DATED this 29 day of December 2012.

  
KENNETH K. JORGENSEN  
Deputy Attorney General

Subscribed and sworn to before me this 7<sup>th</sup> day of December 2012.



*R. Neum*  
Notary Public  
Residing in Borse Idaho  
My Commission Expires on 3/10/2017

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of December 2012, I caused to be served a true and correct copy of the foregoing Response to Petitioner's First Set of Requests for Admissions to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☒ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile

John C. Lynn  
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Rosean Newman, Legal Secretary

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Attorneys for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2012 DEC 31 PM 4 43

*Michelle Emerson*

BY *[Signature]* CLERK  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

JAMI DEAN CHARBONEAU, )

Petitioner, )

v. )

THE STATE OF IDAHO, )

Respondent. )

Case No. CV-2011-638

**AFFIDAVIT OF TOM BERRY  
IN SUPPORT OF  
MOTION TO COMPEL**

STATE OF IDAHO )

:ss

State of Idaho )

I, TOM BERRY, having been first duly sworn upon oath, depose and say as follows:

1. I have been appointed by this Court to serve as an investigator for the Petitioner in the above matter. I have taken the following steps to uncover the original Jerome County prosecution, court and sheriff's files relating to the prosecution which is before the Court in these post-conviction proceedings.

2. On January 27, 2012, I spoke in person with the Jerome County Clerk's Office and advised them that I wished to see any and all items related to the Charboneau murder case that was in the custody of the Jerome Clerk's Office. That request was passed on to District Court Clerk, Tracee.

3. On February 9, 2012, I spoke via telephone with District Court Clerk Tracee concerning my request to examine the Charboneau murder case documents. Tracee told me that I would be denied any attempt to view the documents in the Clerk's possession without a court order. She also explained to me that a public information request for review of the records would not make all of them available to me, as some of the items she had were not "Public Records", and I would need a Judge's order to see them.

4. On February 23, 2012, at approximately 9:10 a.m., I arrived at the Jerome County Prosecutor's Office. My reason for contacting the Prosecutor's Office was to act upon a Court Order issued by Judge Robert Elgee. The Order required the Jerome County Prosecutor's Office to allow me to inspect, review and obtain documents in the Charboneau first degree murder file. Upon arrival, I asked to speak with Deputy Prosecutor Mike Sieb, who met with me a few minutes later. Mr. Sieb asked if Brian Tanner had contacted me. He was referring to the fact that he had advised Mr. Tanner that it had been decided that I would not be allowed to review the documents unless a Deputy Sheriff was present; he further stated that the Sheriff's Office would not have anyone available that day or the following week. I told Mr. Sieb that I had talked with

Mr. Tanner and that it was his position that the Order had been out for some time and that the Judge had signed the order on February 3, 2012. Mr. Sieb then told me he would get back with me at a time when the Sheriff was available.

I then asked Mr. Sieb if he was denying me access, and he replied that he was not. I next advised Mr. Sieb that I was there to execute the Order from the Judge and that he was denying me access. He said "good deal" and began to walk away. Mr. Sieb then said to me that he had a four year old at home that had a little badge, and holster for it too, and wanted to know if I wanted him to bring that in for me to wear. At this point, I advised Mr. Sieb that if he was going to be childish about it, that would be fine. As I was leaving, Sieb called me what sounded like "jerk" as he was returning to his office.

5. In the afternoon of February 23, 2012, I spoke via telephone with Jerome County Chief Deputy, Captain Jack Johnson. I asked Captain Johnson if anyone from the Jerome County Prosecutor's Office had contacted him regarding the Court's Order for access to the Sheriff's file. Captain Johnson told me that a short time prior to my call he had received a call from the Prosecutor's office concerning that request. He then confirmed for me that this was first he had heard of it, though he could not say if perhaps they had spoken to the Sheriff. He said he would try to clear some time up next week to help

6. On February 27, 2012, I again went to the Jerome County Prosecuting Attorney's Office with Brian Tanner to review any records they had in their possession related to the murder case. Mr. Sieb escorted us to a room that contained four or five boxes. The only records of the murder case I found were court transcripts. I did not find any original police reports, witness statements, prosecutor's case notes, evidence lists or any item in any form that would have been a part of the Prosecutor's case file. I was not provided with any explanation as to the



whereabouts of any other files or documents that one would normally be associated with a working prosecution case file.

7. On March 13, 2012, I left a phone message for Jerome Sheriff's Captain Jack Johnson with a request for a time and location to see all the Charboneau murder case files, as provided for in the Judge's Order. On March 14, 2012, I received a telephone call back from Captain Johnson, advising me that he and his staff could not locate any of the requested murder case files and had no idea what had become of them.

8. On March 14, 2012, I received a call from District Court Clerk Tracee, advising me that because of staffing issues as well as a demand for her time, I would not be able to see the items in the Clerk's custody until March 30, 2012 at 10:00 am. I expressed concern that it was taking a long time but thanked her for her help in the matter.

9. On March 15, 2012, I spoke with Jerome County Sheriff's Detective Rick Cowen concerning the missing Sheriff files. Det. Cowen told me that he had never seen any of the documents relating to the murder case since his employment with the Sheriff's Department. Det. Cowen told me that on orders from Capt. Johnson, he had done all he could to try and locate the documents or find any person current or past that may know something about them, and that the only person that he spoke with who had seen the files was former Sheriff Larry Webb. Webb told him that all the documents were in the file cabinet when he left office and turned it over to newly elected Sheriff, Larry Gold. Detective Cowen assured me that he would continue to look for the files and that if he did locate them he promised me that he would notify Judge Elgee if they were found. I have attached a copy of the report I requested from Detective Cowen concerning his search for the Charboneau murder case files.

10. On March 30, 2012, I went to the Jerome County courthouse and reviewed evidence still kept at the court house that was admitted in trial.

11. On April 11, 2012, I spoke with Jerome County Sheriff Doug McFall concerning the lost records. He confirmed that they were not in the Sheriff's files and assured me that they would continue to try and locate them.

12. On December 8, 2012, I interviewed former Jerome County Sheriff Chief Deputy Larry Webb and he had no information regarding the missing Sheriff's Office files.

13. To date, neither the Jerome County Prosecutor's Office nor the Jerome County Sheriff's Office have provided any further information concerning the whereabouts of the files sought.

14. I have worked in law enforcement for thirty (30) years and I have never witnessed such a disappearance of files as noted above. I recently was called upon to testify for the Oregon Department of Justice on a new charge related to a pedophile that I had arrested and sent to prison seventeen (17) years ago, and who had again been arrested on new charges. When I requested to go through those old files, I found all my old case files from 1994, as well as all the prosecution files and notes relating to that case. That is what I have always seen done in this profession. The fact that the Jerome County Prosecutor's Office and the Jerome County Sheriff's Office cannot locate their respective complete files regarding the prosecution of Petitioner is highly unusual.

DATED This 19 day of December, 2012.

Tom Berry  
TOM BERRY

SUBSCRIBED AND SWORN To before me, a Notary Public in and for the State of Idaho, this 19 day of December, 2012.



Adia Wright  
Notary Public for Idaho  
My Commission Expires: 9/26/17

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 28 day of December, 2012, I served a true and correct copy of the foregoing document, by hand-delivering the same, to:

KENNETH K. JORGENSEN  
Deputy Attorney General  
Special Prosecuting Attorney  
State of Idaho  
700 W. State St., 4<sup>th</sup> Floor  
Boise, ID 83720-0010

DATED This 28 day of December, 2012.

John C. Lynn  
JOHN C. LYNN  
Attorney for Petitioner

May 17, 2012

Jamie Dean Charboneau

I, Sergeant Ricky K Cowen was requested to locate the Jerome County Sheriff's Office file related to the 1<sup>st</sup> Degree Murder Conviction of Jamie Dean Charboneau.

I have of May 17, 2012 been unable to locate this file.

I have talked to several ex and current law enforcement personnel in order to locate this file.

Below is a list of those I interviewed and what they were able to tell me about the file.

Gerald Brant: Mr. Brant retired as a Captain from the Jerome County Sheriff's Office and is currently the Jerome County Corner. Mr. Brant told me he had never seen the Charboneau file and had no information where it might be.

Nancy Strickland: Mrs. Strickland was a long time employee, records clerk, of the Jerome County Sheriff's Office and retired. Mrs. Strickland is also my neighbor. Mrs. Strickland told me she had never seen the Charboneau file and had never had a reason to look it up.

Jocelyne Nunnally: Mrs. Nunnally was the Undersheriff for Sheriff Jim Weaver for several years and has since retired and is currently a Deputy with the Gooding County Sheriff's Office. Mrs. Nunnally also told me she had never seen the file and did not know where it is.

Larry Webb: Mr. Webb was the Chief Deputy for Sheriff Elza Hall and one of the investigators on the Charboneau case. Mr. Webb said the last time he remembered seeing the case was it being in the file with everything thing lese when he left office. Mr. Webb had no other information about where the file might be located.

George "Pee Wee" Silvers: Mr. Silvers is a retired sheriff of Jerome County, was the Sheriff after Larry Gold, and locale business owner. Mr. Silver was a deputy sheriff for several years in Jerome County before becoming the Jerome Police Chief in 1990. Mr. Silvers was elected Sheriff beating Larry Gold for the job. Mr. Silvers was the beat in an election by Jim Weaver. Mr. Silvers said the only time he recalled seeing the Charboneau file was when he was a deputy sheriff. Mr. Silvers said he recalled looking at it once out of curiosity but nothing more than that. Mr. Silver's mentioned in my conversation with him that Jamie Charboneau and Larry Gold were "tight." I asked Mr. Silver's about this and he mentioned that Larry Gold would take Jamie Charboneau to his home for "out of his cell and take him to Thanksgiving Dinner." I asked Mr. Silvers if he thought Mr. Gold could have taken the file when he left office and he said he could have but didn't know. Mr. Silvers recommended talking to Meto Alanzon spl. who was Mr. Gold's Chief Deputy about the case. (Larry Gold has since passed away).

I would like to note the steps taken to locate the Charboneau file. I have been able to locate Mr. Charboneau's jail file, jail card and old 3 x 5 card.

**Jail Card:** Jail cards were used by the Jerome County Jail up until mid-2000s. Jail cards were given to each inmate and all bookings were noted on these cards. Also on these cards were inmate numbers. This number was given to the inmate for all his / her records. Number given to Jamie Dean Charboneau was 11 854.

**Jail file:** I obtained the jail file for Mr. Charboneau. The earliest document in this file is date stamped August 18, 2989. This is an Order of Transport to move Mr. Charboneau from Idaho State Corrections to Jerome County for a hearing to be held August 22, 1989. No documents in this file are prior to this date.

**3 x 5 cards:** Were filing systems most law enforcement agencies used prior to computers to keep track of files. It shows dates when contacts were made with Mr. Charboneau.

I also locate a box of evidence in one of the evidence safes. This is a sexual assault kit, I am not clear if this is from the rape Marilyn, Mr. Charboneau's wife reported prior to her murder for from the murder itself.

---

Sergeant Ricky K Cowen

**LAWRENCE G. WASDEN**

Idaho Attorney General

**PAUL R. PANTHER**Chief, Deputy Attorney General  
Criminal Law Division**KENNETH K. JORGENSEN ISB#4051**Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 JAN 7 PM 3 24

*Michelle Emerson*

BY

CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2011-638

**OBJECTION TO PETITIONER'S  
MOTION TO COMPEL**

**COMES NOW**, Kenneth K. Jorgensen, Deputy Attorney General and Special Prosecuting Attorney for Jerome County and files this Objection to the Petitioner's Motion to Compel.

**A. The Motion To Compel Should Be Denied For Failure To Comply With The Mandatory Certification**

A motion to compel requires a certification that the moving party has made a good faith effort to confer with the opposing party to secure the desired discovery. I.R.C.P. 37(a)(2) ("The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an

**OBJECTION TO PETITIONER'S MOTION TO COMPEL, Page 1**

effort to secure the disclosure without court action.”). Neither the Motion to Compel nor the documents supporting the motion contain such a certification. In fact, counsel for petitioner have made no effort, in good faith or otherwise, to resolve discovery differences prior to filing the Motion to Compel.

Petitioner's failure to comply with the mandatory rules of procedure should result in the denial of his motion.

**B. The Idaho Department Of Correction Is Not A Party To This Action**

The “state,” for purposes of prosecution, is “all the government agents having a role in investigating and prosecuting the offense.” Queen v. State, 146 Idaho 502, 505, 198 P.3d 731, 734 (Ct. App. 2008) (defining state’s disclosure duties under Brady v. Maryland, 373 U.S. 83 (1963)). This is the basis for the State’s general objection that Charboneau’s discovery requests exceed the proper scope of such requests by demanding documents and information from state agencies having nothing to do with his prosecution. The responses to discovery are therefore based on the Respondent in this post-conviction action being the same party that brought the prosecution.

Petitioner contends the Department of Correction “is an agency of the State” and therefore “[c]learly” “not a third party.” (Memorandum, p. 8.) His authority for this contention is that the Department of Correction is an executive agency. (Id., pp. 8-9.) The law, however, is that suit against one part or agency of state government is not suit against all of state government. For example, Rule 3(b) of the Idaho Rules of Civil Procedure provides that “all civil actions by or against a governmental ... agency ... shall designate such party in its governmental ... name only ....” I.R.C.P. 3(b). See also I.R.C.P. 10(a)(1) (all parties must be designated on complaint). The proper name for a suit against the Department of Correction is “Plaintiff v. Idaho Department of

**OBJECTION TO PETITIONER’S MOTION TO COMPEL, Page 2**



Correction.” See, e.g., Noak v. Idaho Department of Correction, 152 Idaho 305, 271 P.3d 703 (2011). Likewise, civil suits are generally brought against “governmental entities,” I.C. § 6-903, defined as the “state” or any “office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof” I.C. § 6-902(1) and (3). A suit against the “state” is not a suit against every “office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.” Finally, different departments of state government may contract with each other, I.C. § 67-2332, a strange grant of power by the legislature if the state government is as unitary as suggested by petitioner.

The Idaho Supreme Court has concluded that, where the defendant in a suit was the Department of Agriculture, it was improper to serve interrogatories on anyone other than the Department of Agriculture. Crown v. State, Department of Agriculture, 127 Idaho 175, 181-82, 898 P.2d 1086, 1092-93 (1995). Because the Department of Correction is not a party to this action, it cannot be compelled to give up documents absent a proper subpoena. The Department of Correction is no more a party to this action subject to discovery requests than the Department of Health and Welfare, the Department of Transportation, or the Office of the State Appellate Public Defender, all of which are subdivisions of Idaho State government.

Petitioner next contends the Department of Correction is “not a third party” because it is represented by the Office of the Attorney General. (Memorandum, p. 9.) This contention is meritless. That the Office of the Attorney General represents agencies and departments in state government does not mean that suit against one part of state government is a suit against all parts of state government. Petitioner’s

**OBJECTION TO PETITIONER’S MOTION TO COMPEL, Page 3**

argument is as logical as the Respondent claiming it is entitled to discovery from all of John Lynn's and Brian Tanner's clients. Legal representation of two different state governmental entities does not make them the same party in litigation.

Finally, Petitioner cites Tri-State Hospital Supply Corp. v. United States, 226 F.R.D. 118 (D.C.D.C., 2005), as support of his argument. (Memorandum, pp. 9-10.) The portion of that opinion cited by petitioner addresses the U.S. government's objection to Tri-State's attempt to depose certain governmental employees who were not named in the complaint. The court overruled the objection, noting that discovery is not merely limited to the immediately relevant but to what may lead to relevant evidence. The depositions were therefore allowed to "flesh out" the case. Tri-State, 226 F.R.D. at 126-29. The state encourages this Court to follow the Tri-state case *and allow Petitioner to "flesh out" his case by conducting reasonable depositions of Department of Correction employees*. The Respondent is not taking the position of the United States in the Tri-State case—that Petitioner is not entitled to discovery about actions by Department of Correction employees. Respondent, in fact, agreed months ago to such depositions. That Petitioner is allowed to conduct discovery related to the Department of Correction *in the form of subpoenas and depositions* does not make that Department a "party" to the case.

The rules of discovery allow parties to seek discovery from non-parties in civil suits by means of subpoenas. I.R.C.P. 30(a). Such subpoenas can also require production of documents. I.R.C.P. 30(b)(5). The Respondent has never had an objection to petitioner seeking discovery in this manner from the Department of Correction. Petitioner has never asserted that this manner of discovery is objectionable to him. His efforts to get Respondent to obtain documents and other evidence from a

**OBJECTION TO PETITIONER'S MOTION TO COMPEL, Page 4**

non-party should be rejected and he should be ordered to proceed with any depositions necessary for discovery.

**C. Respondent Has Already Produced All The Documents In Its Possession, Custody Or Control**

Petitioner contends the Respondent has not provided adequate responses to requests for production 1-6. (Memorandum, pp. 5-7.) His arguments are without merit.

A party in civil litigation must, if provided a request for production, produce documents "which are in the possession, custody or control of the party." I.R.C.P. 34(a). Respondent has provided petitioner with access to the prosecution file—with the exception of documents it deemed privileged and instead submitted to the Court for inspection—and Petitioner was allowed to make copies of any documents his agents deemed helpful. Documents generated and held by third parties are not within the Respondent's possession, custody or control. See State v. Babb, 125 Idaho 934, 877 P.2d 905 (1994) (crime scene not within state's possession, custody or control for purposes of defense request for access to crime scene—therefore defendant cannot gain access through I.C.R. 16 discovery request and required to seek subpoena).

In Request No. 1 Petitioner asks for "*all documents generated by you or third parties as the result of the filing of*" this case. (Emphasis added.) The objections asserted by Respondent are that the request by definition seeks documents subject to the work-product privilege; seeks documents outside of the possession, custody or control of the Respondent; and is overly broad and burdensome as it would require Respondent to find and produce every document produced by anyone in relation to this case regardless of its potential relevance. This request is absurd in its scope. The objections are well-taken.

**OBJECTION TO PETITIONER'S MOTION TO COMPEL, Page 5**

In Request Nos. 2 and 3 Petitioner requested all "documents relating to any inquiry or investigation" of the facts alleged in the Amended Petition and "[a]ll documents relating to any inquiry or investigation of any item ... contained in the 'packet.'" The Respondent objects on the basis that these requests seek matters that would be protected by the work product privilege insofar as they seek the undersigned attorney's notes and other trial preparation materials, and that all documents not subject to the privilege have been produced. Respondent does not articulate why these objections are not well-taken. (Memorandum, pp. 5-7.)

In Request No. 4 petitioner seeks all documents related to the Department of Correction's "policy and practice" of inspecting or seizing inmate correspondence. The requested documents, if any, are not in the possession, custody or control of the Respondent, and should be sought by subpoena to the Department of Correction.

As support for his argument that a party in civil litigation is required to obtain documents not in its "possession, custody or control" as set forth in the Idaho rule, I.R.C.P. 34(a), petitioner argues that all documents that Respondent could conceivably obtain are in its control. (Memorandum, pp. 5-6.) As authority petitioner cites the decisions of two federal district courts. Review of those cases shows they are inapplicable to Idaho's discovery rules and this case.

In the first case the court addressed the scope of a *subpoena* and concluded that documents held in a bank's China branch were practically available to employees in its New York branch. Tiffany (NJ) LLC v. Qi Andrew, 276 F.R.D. 143, 147-50 (S.D.N.Y. 2011). Nothing in the case suggests that mere ability to obtain a document makes that document in the care, custody or control of a party. Here the documents were clearly in the custody and control of the bank; the only issue was whether procuring them from a

distant office governed by different laws would work undue hardship. In the second case the district court held that a "party may be ordered to produce a document in the possession of a non-party entity if that party *has a legal right to obtain the document or has control over the entity who is in possession of the document.*" Soto v. City of Concord, 162 F.R.D. 603, 619-20 (N.D. Cal. 1995) (emphasis added). Thus, psychiatric evaluations prepared at the party's request, reviewed by the party, but then returned to the third-party evaluator, were deemed still within the party's control. Id.

Petitioner's argument appears to be that all agencies of the state government have access to, and therefore custody and control of, all other agencies' documents. (Memorandum, pp. 5-6.) He has failed to show that this is so, and in fact it is not. It should go without saying that, for example, the Department of Insurance does not have possession, custody or control over the Department of Agriculture's records. A FOIA document request to one agency will not result in production of documents held by another agency. Simply stated, the claim that all divisions of state government have "possession, custody or control" over all documents generated in state government, including those of other divisions, is on its face without merit.

A quick illustration of how petitioner's argument would end in an absurd result is that the State Appellate Public Defender is clearly part of state government. I.C. § 19-869. According to petitioner's logic, if he or another person convicted of a crime had brought an action for post-conviction challenging the actions of the State Appellate Public Defender the Respondent would have "control" over the SAPD's files for purposes of discovery. Any assertion that the prosecution has effective control over the defense counsel's files is obviously incorrect. Petitioner's argument that his prosecutors control Department of Correction documents is likewise without merit.

**OBJECTION TO PETITIONER'S MOTION TO COMPEL, Page 7**

Request Nos. 5 and 6 were for all documents regarding the "investigation and prosecution of Petitioner" generated by the Jerome County Sheriff's Office and the Jerome County Prosecutor's Office. There is a typo in the response to Request No 6, which should read, "The Jerome County Prosecutor's Office was not the prosecuting agency in the original criminal case."<sup>1</sup> The response to the requests is that no such documents are known to the Respondent other than those produced in the prosecution file in the custody of the Office of the Attorney General and made available to the petitioner, and preserving the objection that the requests are overly burdensome as they are not limited to properly discoverable matters. Given that petitioner's own investigation has confirmed these responses (see Affidavit of Tom Berry, ¶¶ 4-7, 9, 11 (neither Sheriff's nor Prosecutor's office has documents discoverable in this case)), it is difficult to ascertain exactly what petitioner hopes to compel.

Request No. 7 is for all documents "generated by [the] Attorney General's Office" relating to the "investigation and prosecution of Petitioner." The response is that the documents were provided by allowing access to the prosecution file except those submitted to the Court for *in camera* review. Again, what petitioner hopes to compel is not set forth in his Memorandum.

Petitioner has not set forth what he hopes to compel the Respondent to produce. The Respondent has already produced the prosecution file. Neither the Jerome County Sheriff nor the Jerome County Prosecutor's offices have documents responsive to petitioner's requests. He may obtain the documents in the custody and control of the

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<sup>1</sup> Undersigned would have been happy to correct the typo or clarify the answer if counsel for Petitioner would have inquired.

Department of Correction by subpoena *duces tecum*. Charboneau has failed to show that there is any ground for his motion to compel the production of documents.

**D. Respondent Has Fully And Fairly Responded To Petitioner's Interrogatories**

The entirety of Petitioner's argument seeking to compel the Respondent in relation to his interrogatories is apparently that Respondent "has not consulted with the IDOC as to the facts behind the disclosure of the packet on March 18, 2011." (Memorandum, p. 4.) This is, essentially, correct. Undersigned counsel is ethically prohibited from contacting employees of the Department of Correction regarding this case. (See Affidavit of Kenneth K. Jorgensen, filed concurrently herewith.) Respondent was required to furnish information "as is available to the party." I.R.C.P. 33(a)(1). The proper way to obtain evidence from the Department of Correction is through subpoena and deposition, and this is the only discovery method currently available to *either party*.

**E. Respondent Has Fully And Fairly Responded To Petitioner's Requests For Admission**

Petitioner's requests for admission ask the Respondent to admit the facts of his petition, such as that the documents he has are "authentic," that they were in the "packet," that certain employees of the Idaho Department of Correction "intercepted" the documents, that a certain employee "delivered" the "packet," and that the place the "packet" was "located" was "not accessible by inmates." The Respondent denied the requests for admissions because it has no evidence suggesting they are true. In the Motion to Compel, Petitioner raised the "troubling question" of "why has not the State made any inquiry" and that a lack of inquiry shows "disregard[]" of the "rules" and "disrespect[]" for the "spirit and intent of the discovery process itself." (Petitioner's First



Set of Requests for Admissions.) Petitioner does not suggest what "inquiry" it wishes the Respondent to make.

Undersigned counsel cannot directly contact any employee of the Idaho Department of Correction because the attorney for the Idaho Department of Correction has informed counsel, through counsel's supervisor, that he is not to contact Department employees because of potential tort litigation by Appellant against the Department. (Affidavit of Kenneth K. Jorgensen.) Respondent has for months agreed that taking the depositions of the Department of Correction employees who petitioner claims were involved in the alleged "interception" of documents and delivery of the "packet" would be the proper method to conduct an "inquiry." At the moment, neither counsel may contact Department employees except through formal subpoena.

The Respondent is aware of its ongoing discovery obligations. If any evidence comes to light that might support Petitioner's allegations Respondent will amend its responses accordingly. Currently, however, Petitioner has failed to show any problem with the Respondent's denials of his requests for admission.

**F. The Respondent Has Properly Preserved Its Work-Product Privilege Objection**

Petitioner also asserts that Respondent's assertion of the work-product privilege, in relation to Interrogatories 2 and 14 and Requests for Production of Documents 1-3, is either due to "lack of familiarity with the civil discovery rules or lack of good faith." (Memorandum, pp. 11-12.) This argument is without merit. The rule clearly states that "[w]hen a party withholds information otherwise discoverable under these rules by claiming privilege" it must assert the privilege expressly and "describe the nature" of the materials withheld. I.R.C.P. 26(b)(5)(A) (emphasis added). Review of Respondent's

**OBJECTION TO PETITIONER'S MOTION TO COMPEL, Page 10**

answers to the challenged interrogatories and requests show that the Respondent *did not withhold any evidence* requested, but instead merely asserted the privilege, due to the scope and breadth of the discovery requested, in order to preserve the objection.

The interrogatories in question, and their responses, are as follows:

INTERROGATORY NO. 2: With respect to the persons you have identified in your answer to INTERROGATORY NO. 1, please state the general nature of the facts to which they have knowledge.

Response to Interrogatory No. 2: See Response to Interrogatory No. 1.

(Response to Petitioner's First Set of Interrogatories, p. 2.) Petitioner does not claim the privilege was improperly claimed in response to Interrogatory No. 1. That Interrogatory asked for information regarding any person with, or who claimed to have, "knowledge of the existence, preparation and custody of the 'packet,'" and any person with knowledge of any investigation relating to the "packet." The state responded that it did not know of anyone other than the Petitioner and his agents who claimed to have any such knowledge. Respondent also asserted the work-product privilege to preserve it should the Respondent conduct any investigation in the future. (Id.)

Interrogatory No. 14 asks about any investigation "Respondent or counsel for Respondent or the Idaho Department of Corrections [sic]" regarding the authenticity of alleged e-mails between employees of the Department of Correction. The response includes an assertion that whatever investigation has been conducted by the Respondent or counsel is clearly subject to the privilege.

Request for Production 1 seeks "all documents" generated by anyone "as a result" of the filing of this case. This request is so broad that any possible objection must be asserted, including that it necessarily encompasses privileged documents.

**OBJECTION TO PETITIONER'S MOTION TO COMPEL, Page 11**

Request for Production 2 seeks "[a]ll documents relating to any inquiry or investigation of the alleged 'packet'" and Request for Production 3 seeks "[a]ll documents relating to any inquiry or investigation of any item ... contained in the 'packet.'" These requests therefore necessarily include privileged documents.

The Respondent may investigate this case as developments warrant. The Respondent is not required to look for evidence from third parties that petitioner may desire. If the Respondent chooses to conduct an investigation into materials of matters not currently under its control, it may wish to assert the work-product privilege. For now it has merely preserved its privilege by objecting to certain interrogatories and requests for production. Respondent is aware of its ongoing duties in relation to discovery should it conduct its own investigation. Currently, however, there is no discovery to compel the Respondent to produce.

**F. Petitioner's Request For Sanctions Is Without Merit**

If a Motion to Compel is granted, the Court shall award costs, including attorney fees, "unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." I.R.C.P. 37(a)(4). If the Motion to Compel is denied, the Court shall award costs, including attorney fees, "unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust." I.R.C.P. 37(a)(4).

Petitioner requests sanctions, but asks that the attorney fees be reimbursed to the County. (Memorandum, p. 13.) Because the County is paying for Respondent's counsel as well, this seems pointless. Respondent requests that this Court deny costs

to either party because the money would be coming out of and going into the same account.

Petitioner also asks that his requests for admission be deemed admitted under I.R.C.P. 36(a). (Memorandum p. 13.) As pointed out above, the Respondent's denials are reasonable.

Petitioner failed, as set forth in section A., above, to comply with the applicable rules and attempt to address these matters with the Respondent in good faith. This reason alone is grounds to deny the motion and any request for sanctions. Moreover, the law supports Respondent's positions that the Department of Correction is not a party to this action, and therefore discovery from that Department and its employees must be conducted by subpoena and deposition, and that the Respondent has properly preserved its claims of privilege.

#### **G. Conclusion**


Petitioner has all but admitted that his discovery requests are a fishing expedition by which he hopes to get Respondent to investigate his case for him. He hopes to get Respondent to "consult[] with the IDOC as to the facts" related to his allegations. (Memorandum, p. 4.) He wants Respondent to "obtain" "documents dealing with the packet" that is the core of his post-conviction claims. (Memorandum, p. 6.) He wants Respondent to learn "what happened" to "files" "if they no longer exist." (Memorandum, p. 7.<sup>2</sup>) He wants Respondent to make "inquiry as to the authenticity of written materials in the packet" which is in Petitioner's possession. (Memorandum, p. 7.) "Fishing

---

<sup>2</sup> Respondent notes that Petitioner raises this request for the first time in his Motion to Compel; he has not made any request for such information in his actual discovery requests.

expedition' discovery should not be allowed." Murphy v. State, 143 Idaho 139, 148, 139 P.3d 741, 750 (Ct. App. 2006) (citing Charboneau v. State, 140 Idaho 789, 793, 102 P.3d 1108, 1112 (2004)). Respondent therefore requests this Court to deny the Motion to Compel.

DATED this 7 day of January 2013.

  
KENNETH K. JORGENSEN  
Deputy Attorney General

#### CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this \_\_\_\_ day of January 2013, I caused to be served a true and correct copy of the foregoing Objection to Petitioner's Motion to Compel to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

  
Patricia Miller, Legal Secretary

**LAWRENCE G. WASDEN**

Idaho Attorney General

**PAUL R. PANTHER**Chief, Deputy Attorney General  
Criminal Law Division**KENNETH K. JORGENSEN ISB#4051**Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 JAN 7 PM 3 24

*Michelle Emerson*

CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

Case No. CV-2011-638

**AFFIDAVIT OF MARK A. KUBINSKI**

STATE OF IDAHO )

COUNTY OF ADA )

) ss.

MARK A. KUBINSKI, being duly sworn upon her oath, deposes and says:

1. I am an attorney licensed to practice in the State of Idaho and am employed as the Lead Deputy Attorney General assigned to the Idaho Department of Correction ("IDOC"). I am over the age of eighteen (18) years and competent to testify on the matters herein. I make this affidavit based upon my own personal knowledge.

**AFFIDAVIT OF MARK A. KUBINSKI--1**

2. As the Lead Deputy Attorney General in the Corrections Unit of the Attorney General's Office, I am specifically assigned to represent the IDOC and the Idaho Commission of Pardons and Parole. In that capacity, my duties include representing IDOC employees who are subjected to subpoenas for testimony in court or via deposition, and also to respond to subpoenas or other requests for records in IDOC possession.

3. During 2012 I was contacted by Attorney Brian Tanner in connection with the above-referenced case. Specifically, Mr. Tanner contacted me about scheduling the deposition of Cpl. Mike Hiskett, who is employed by IDOC as a correctional officer at the Idaho Correctional Institution—Orofino (ICI-O). Neither the IDOC nor Cpl. Hiskett are parties to this action. However, in my role as legal counsel for IDOC, I agreed to contact Cpl. Hiskett in order to obtain his availability for a deposition.

4. Attached hereto as Exhibit A is a true and correct copy of an Email exchange between Mr. Tanner and me between the dates August 14 and August 16, 2012. As stated in my August 14<sup>th</sup> email, I agreed to "check with ICIO regarding Cpl. Hiskett's availability on Sept. 14" and also requested a copy of the subpoena for Cpl. Hiskett.

5. Attached hereto as Exhibit B is a true and correct copy of an Email exchange between Mr. Tanner and me (with copies to Deputy Attorney General Ken Jorgensen and ICIO paralegal Laura Ashford) between the dates of October 3 and October 16, 2012. As stated in my October 10<sup>th</sup> email, I would get confirmation of Cpl. Hiskett's availability for his deposition once counsel selected a date.

**AFFIDAVIT OF MARK A. KUBINSKI-2**



6. Attached as Exhibit C is a true and correct copy of an Email exchange between Mr. Tanner and me (with copies to Deputy Attorney General Ken Jorgensen and Attorney John Lynn) between the dates of December 11 and December 18, 2012. As stated in my December 12<sup>th</sup> email to Mr. Tanner, my office would accept service of the subpoena for Cpl. Hiskett. The practice of accepting service of subpoenas on behalf of IDOC employees for matters arising out of their employment with the IDOC is a responsibility of my office, and is expressly authorized by the Idaho Board of Correction pursuant to IDAPA 06.01.01.106.

7. As further stated in Exhibit C, Mr. Tanner requested that I respond to discovery requests in this action "as they related to IDOC and officers of the IDOC." In response to this request, I informed Mr. Tanner on December 18, 2012 that "[b]ecause neither IDOC nor Cpl. Hiskett are parties to the action, they are not obligated to respond to discovery requests, which by rule are limited to parties. Therefore, I cannot agree to your request to respond to the discovery requests."

8. Subsequently, on December 20, 2012, I received an email from Mr. Tanner, which included a subpoena duces tecum for Cpl. Hiskett. Attached as Exhibit D is a true and correct copy of an Email exchange between Mr. Tanner and me (with copies to Deputy Attorney General Ken Jorgensen and Attorney John Lynn) between the dates of December 20 and December 24, 2012. As stated in my December 24<sup>th</sup> email to Mr. Tanner, the subpoena was "not signed or dated by either the clerk or you, and is therefore not valid. Please provide me with a properly issued subpoena." As of today's date, I have not received a properly issued subpoena from Mr. Tanner. If my

**AFFIDAVIT OF MARK A. KUBINSKI--3**

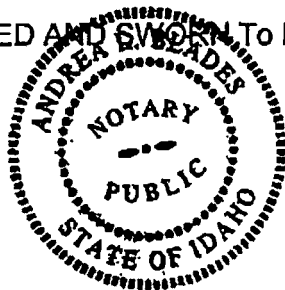
office received a properly issued subpoena in this case, I would accept service of it pursuant to IDAPA 06.01.01.106.

9. Further your Affiant sayeth naught.

DATED this 4<sup>th</sup> day of January, 2013.

Mark A. Kubinski  
MARK A. KUBINSKI

SUBSCRIBED AND SWORN To before me this 4<sup>th</sup> day of January, 2013.



Andrew A. Blades  
Notary Public for Idaho  
Residing at 03/04/2016 Ada Co.  
Commission Expires: 12

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of January 2013, I caused to be served a true and correct copy of the foregoing Affidavit of Mark A. Kubinski to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
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John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
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☒ Facsimile

for  
AFFIDAVIT OF MARK A. KUBINSKI-4

Patricia Miller  
Rosean Newman, Legal Secretary

JAN. 7. 2013 3:13PM

ID ATTY GEN - CRIM DIV

NO. 047 P. 6

EXHIBIT A

**From:** Mark Kubinski  
**To:** Tanner, Brian  
**Date:** 8/16/2012 4:46 PM  
**Subject:** Re: Hiskett Depo

Brian, As a follow up, Cpl. Hiskett is not available the following dates: Aug 19th through 25th, Sept 9th through 15th, Nov 18th through 24th, Dec 23rd through 29th. Hope that helps with your scheduling.

Thanks,  
Mark

>>> Brian Tanner <[briantanner.esq@gmail.com](mailto:briantanner.esq@gmail.com)> 8/16/2012 11:01 AM >>>  
Hi Mark,

Thanks for the heads up. I was about to order a flight. I will get back to you.

BT

On Thu, Aug 16, 2012 at 10:53 AM, Mark Kubinski <[mkubinsk@idoc.idaho.gov](mailto:mkubinsk@idoc.idaho.gov)> wrote:

> Brian, I just learned from Cpl. Hiskett that he is on vacation Sept. 9  
> through 17, and therefore is unavailable on September 14th. Do you have  
> alternate dates to propose?  
>  
> Thanks,  
> Mark  
>  
> >>> Brian Tanner <[briantanner.esq@gmail.com](mailto:briantanner.esq@gmail.com)> 8/14/2012 10:00 AM >>>  
> Mark,  
>  
> I am waiting to see when I can get a flight. I will send a subpoena with  
> the time when that is arranged. I have told L. Ashford at IDOC and Ken  
> Jorgensen to plan on the 14th of September.  
>  
> Thanks,  
>  
> BT  
>  
> On Tue, Aug 14, 2012 at 9:59 AM, Mark Kubinski <[mkubinsk@idoc.idaho.gov](mailto:mkubinsk@idoc.idaho.gov)>  
> > wrote:  
>  
> > Brian, As a follow up to our telephone call, I will check with ICIO  
> > regarding Cpl. Hiskett's availability on Sept. 14. Also, please forward  
> > a  
> > copy of the subpoena to me when you have it.  
> >  
> > Thanks,  
> > Mark Kubinski  
> > Lead Deputy Attorney General  
> > Idaho Dept. of Correction  
> > (208) 658-2117  
> >  
> >

JAN. 7. 2013 3:13PM

ID ATTY GEN - CRIM DIV

NO. 047 P. 8

EXHIBIT B

**From:** Mark Kubinski  
**To:** Tanner, Brian  
**CC:** Ashford, Laura; Jorgensen, Ken  
**Date:** 10/16/2012 4:22 PM  
**Subject:** Re: Deposition Dates for Mike Hiskett

I will leave it to you and Ken to decide on November 14 or 15, since I have not decided whether I'll be attending.

Mark

>>> Brian Tanner <[briantanner.esq@gmail.com](mailto:briantanner.esq@gmail.com)> 10/16/2012 4:12 PM >>>  
I have a jury trial from October 24 to October 26. I have a sentencing on November 16. This means it will have to be November 14 or 15. What works?

Thanks,

BT

On Wed, Oct 10, 2012 at 1:59 PM, Mark Kubinski <[mkubinsk@idoc.idaho.gov](mailto:mkubinsk@idoc.idaho.gov)> wrote:

> Brian/Ken: I've checked with Cpl. Hiskett regarding available dates. In  
> cross-referencing his availability with mine and Ken's, while giving  
> preference to a Friday date, here are several available dates:  
>  
> November 9 and 16 for sure (Cpl. Hiskett is on vacation beginning Nov.  
> 19). Based on Ken's dates, I'm also available October 23-24; Nov. 14-16.  
>  
> Please let me know what you prefer as soon as possible and I will get  
> final confirmation from Cpl. Hiskett.  
>  
> Thanks,  
> Mark  
>  
> >>> "Jorgensen, Ken" <[ken.jorgensen@ag.idaho.gov](mailto:ken.jorgensen@ag.idaho.gov)> 10/3/2012 11:12 AM >>>  
> Brian:  
>  
>  
>  
> My available dates for October and November are as follows:  
>  
>  
>  
> October: 23-26, 29-30  
>  
>  
>  
> November: 9, 14-16, 19-20, 26-30  
>  
>  
>  
> Ken Jorgensen  
>  
> [ken.jorgensen@ag.idaho.gov](mailto:ken.jorgensen@ag.idaho.gov)



JAN. 7. 2013 3:13PM

ID ATTY GEN - CRIM DIV

NO. 047 P. 11

EXHIBIT C



**From:** Mark Kubinski  
**To:** Lynn, John; Tanner, Brian  
**CC:** ken.jorgensen@ag.idaho.gov  
**Date:** 12/18/2012 3:42 PM  
**Subject:** Re: Deposition of Mike Hiskett

Brian, Because neither IDOC nor Cpl. Hiskett are parties to the action, they are not obligated to respond to discovery requests, which by rule are limited to parties. Therefore, I cannot agree to your request to respond to the discovery requests.

Thanks,  
Mark

>>> Brian Tanner <[briantanner.esq@gmail.com](mailto:briantanner.esq@gmail.com)> 12/18/2012 10:11 AM >>>  
Mark,

We have been in the process of obtaining discovery through the civil discovery process and have served Ken Jorgensen with requests for interrogatories, admissions and requests for production of documents. We filed a motion to serve discovery under Idaho Criminal Rule 57(b). This motion was approved by the district judge. Mr. Jorgensen responded to our discovery requests a few days ago. He did not answer any of the questions. The reason for his denial in reference to Mr. Hiskett and others is that he does not represent the IDOC and is not obligated to respond to any questions as it relates to the IDOC.

As a representative of the IDOC, are you willing to respond to our request for discovery as they relate to IDOC and officers of the IDOC? I am attaching our discovery requests here. The interrogatories, admissions and requests for production of documents relate primarily to IDOC and its officers and the "packet" which is the basis for the post conviction application. Questions 10 and 11 do not relate to the IDOC and we don't expect you to respond to these questions.

The reason we have continually delayed the deposition of Mike Hiskett and others, is that we hope to have a response to our discovery requests prior to taking the depositions.

Can you please get back to me this week?

Thank you,

Brian M. Tanner

On Wed, Dec 12, 2012 at 2:08 PM, Mark Kubinski <[mkubinsk@idoc.idaho.gov](mailto:mkubinsk@idoc.idaho.gov)> wrote:

> Brian, Do you have a proposed range of dates? If so, I can then verify  
> Cpl. Hiskett's availability. My office can accept service of the subpoena  
> once a date is agreed upon by all.

>

> Thanks,

> Mark

>

> >>> Brian Tanner <[briantanner.esq@gmail.com](mailto:briantanner.esq@gmail.com)> 12/11/2012 1:12 PM >>>

> We should probably try again on a deposition date for Mike Hiskett. Please  
> Inform me of your and Mr. Hiskett's availabilities. Who do I serve the  
> subpoena duces tecum to? Is the AG's office representing Mr. Hiskett?

>  
> Thank you,

>  
> Brian Tanner

> --  
> Brian M. Tanner  
> Attorney at Law | Tanner Law, PLLC  
> 137 Gooding Street West  
> Twin Falls, Idaho 83301  
> 208-735-5158 | Fax: 208-734-2383  
> [briantanner.esq@gmail.com](mailto:briantanner.esq@gmail.com)  
> <[tirza.delgado@gmail.com](mailto:tirza.delgado@gmail.com)>

>  
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>  
>

--  
Brian M. Tanner  
Attorney at Law | Tanner Law, PLLC  
137 Gooding Street West  
Twin Falls, Idaho 83301  
208-735-5158 | Fax: 208-734-2383  
[briantanner.esq@gmail.com](mailto:briantanner.esq@gmail.com)  
<[tirza.delgado@gmail.com](mailto:tirza.delgado@gmail.com)>

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immediately delete it. Thank you in advance for your cooperation.

JAN. 7. 2013 3:13PM

ID. ATTY GEN - CRIM DIV

NO. 047 P. 14

EXHIBIT D

**From:** Mark Kubinski  
**To:** Lynn, John; Tanner, Brian  
**CC:** ken.jorgensen@ag.idaho.gov  
**Date:** 12/24/2012 1:52 PM  
**Subject:** Re: Subpoena for Hiskett

Brian, The attached subpoena is not signed or dated by either the clerk or you, and is therefore not valid. Please provide me with a properly issued subpoena.

Thanks,  
Mark

>>> Brian Tanner <[briantanner.esq@gmail.com](mailto:briantanner.esq@gmail.com)> 12/20/2012 12:06 PM >>>  
Please find the attached subpoena duces tecum for Officer Hiskett.

—  
Brian M. Tanner  
Attorney at Law | Tanner Law, PLLC  
137 Gooding Street West  
Twin Falls, Idaho 83301  
208-735-5158 | Fax: 208-734-2383  
[briantanner.esq@gmail.com](mailto:briantanner.esq@gmail.com)  
<[tirza.delgado@gmail.com](mailto:tirza.delgado@gmail.com)>

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**LAWRENCE G. WASDEN**  
Idaho Attorney General

**PAUL R. PANTHER**  
Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**  
Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 JAN 7 PM 4 20  
*Michelle Emerson*

BY *[Signature]*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                        |   |                         |
|------------------------|---|-------------------------|
| JAMIE DEAN CHARBONEAU, | ) |                         |
|                        | ) |                         |
| Petitioner,            | ) | Case No. CV-2011-638    |
|                        | ) |                         |
| vs.                    | ) | AFFIDAVIT OF KENNETH K. |
|                        | ) | JORGENSEN               |
| THE STATE OF IDAHO,    | ) |                         |
|                        | ) |                         |
| Respondent.            | ) |                         |

STATE OF IDAHO )  
 ) ss.  
County of Ada )

I, Kenneth K. Jorgensen, being first duly sworn upon his oath, deposes and says:

1. I am the attorney for the Respondent, State of Idaho in the post-conviction case, Jamie Dean Charboneau v. State of Idaho, CV 2011-638. I am a Deputy Attorney General in the Criminal Law Division of the Office of the Attorney General. My representation in this case is by appointment as a special prosecutor for Jerome County.

2. In June of 2011, shortly after being appointed to represent the Respondent, I informed Brian Tanner, counsel for Petitioner, of my willingness to proceed with depositions of specified employees of the Department of Correction. Thereafter I asked

**AFFIDAVIT OF KENNETH K. JORGENSEN, Page 1**

Scott Birch, a criminal investigator with the Criminal Law Division to arrange to interview the first such deponent, Mr. Hiskett. Mr. Birch contacted Mr. Hiskett to arrange a pre-deposition interview. During that conversation a limited discussion of the facts of this case took place between Mr. Hiskett and Mr. Birch.

3. At about this time I had an informal conversation with an employee of the Department of Correction, in which I showed him Exhibit A to the Amended Petition, which is allegedly a copy of e-mail correspondence between employees of the Department of Correction. I asked the employee if the document appeared genuine. He stated that it did not look like the format of e-mail in the system used by the Department of Correction, but told me that he did not know if the format would have been different in Correction facilities in North Idaho (where the e-mails were allegedly exchanged) at the time of the alleged e-mails.

4. After these preliminary steps in preparation for the anticipated depositions, I had a conversation with my immediate supervisor, Paul Panther, the Division Chief of the Criminal Law Division. After discussing the status of the case, Mr. Panther informed me that, Petitioner Charboneau had filed a notice of tort claim against the Department of Correction. Because of the potential for litigation arising from the tort claim, all contact with employees of the Department regarding this case should be arranged through attorneys representing the Department. The basis for this instruction was that the Department needed to be aware of discovery that might affect the potential tort litigation.

5. I do not represent the Department of Correction in any capacity. Upon being informed that I am not to contact employees of the Department without the approval of its counsel, I believe it is my ethical duty to not do so. I have not requested permission from counsel for the Department of Correction to contact its employees, and am instead waiting for Petitioner to arrange depositions of those employees, where mutual discovery may take place.

/

/

/

/

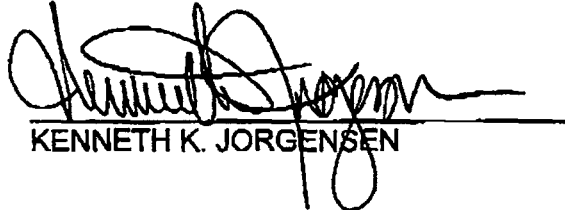
/

/

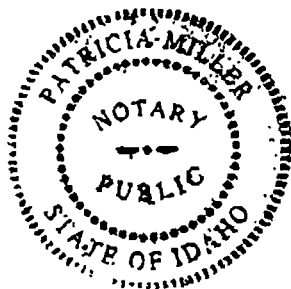
**AFFIDAVIT OF KENNETH K. JORGENSEN, Page 2**

6. This affidavit sets forth the total of contact I have had or directed others to have with Department of Correction employees regarding potential discovery in this case.

Further your Affiant sayeth naught.

  
KENNETH K. JORGENSEN

Subscribed and sworn to before me this 7<sup>th</sup> day of January 2013.



Patricia Miller  
Notary Public  
Residing in Ada County, Idaho  
My Commission Expires on 2/23/16

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7th day of December 2012, I caused to be served a true and correct copy of the foregoing Response to Petitioner's First Set of Interrogatories to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

Patricia Miller  
Patricia Miller, Legal Secretary



JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr.  
Suite 240  
Eagle, ID 83616  
Phone: 208.685.2333  
Email: johnlynn@fiberpipe.net  
ISB #1548

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Phone: 208.735.5158  
Fax: 208.734.2383  
ISB# 7450

Attorneys for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2013 JAN 16 PM 3 55  
*Michelle Emerson*  
CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

|                       |   |                              |
|-----------------------|---|------------------------------|
| JAMI DEAN CHARBONEAU, | ) |                              |
|                       | ) |                              |
| Petitioner,           | ) | Case No. CV-2011-638         |
| v.                    | ) |                              |
|                       | ) | <b>PETITIONER'S REPLY TO</b> |
| THE STATE OF IDAHO,   | ) | <b>STATE'S OBJECTION RE:</b> |
|                       | ) | <b>MOTION TO COMPEL</b>      |
| Respondent.           | ) |                              |
| _____                 | ) |                              |

COMES NOW, the above-named Petitioner, by and through his co-counsel of record, JOHN C. LYNN, and hereby submits PETITIONER'S REPLY TO STATE'S OBJECTION RE: MOTION TO COMPEL. Petitioner will address the State's objections in the order they appear in its OBJECTION TO PETITIONER'S MOTION TO COMPEL ("OBJECTION").

PETITIONER'S REPLY TO STATE'S OBJECTION RE: MOTION TO COMPEL - 1

## **A. THE CERTIFICATION**

The State contends that Petitioner has failed to provide the certification required pursuant to I.R.C.P. 37(A)(2). The certification, in fact, appears on the Page 2 of the MOTION TO COMPEL. It is based on an electronic email exchange on December 17 and 18, 2012, by and between Petitioner's co-counsel, Brian Tanner, and Mr. Jorgensen, counsel for the State (see Exhibit A to AFFIDAVIT OF JOHN C. LYNN IN SUPPORT OF PETITIONER'S REPLY TO STATE'S OBJECTION RE: MOTION TO COMPEL). Mr. Tanner specifically asked Mr. Jorgensen to reconsider his answers and responses to the requested discovery in issue; Mr. Tanner also requested any authority that supported the State's position. Mr. Jorgensen provided no authority and would not reconsider. The State's OBJECTION essentially articulates the same position as that taken in responding to the discovery requests. Petitioner has met his duty to make a good faith effort to confer as required by the Rule.

## **B. THE SCOPE OF THE STATE AS A PARTY**

The essence of the State's OBJECTION is the contention that the Idaho Department of Corrections ("IDOC") is not a party to this proceeding and therefore the State is not required to provide any requested information that pertains to the IDOC. Petitioner has addressed this contention in his MEMORANDUM IN SUPPORT OF MOTION TO COMPEL (pp. 7-11).

In addition, the State misconstrues the nature of these proceedings. This is not a prosecution. This is a petition for post-conviction relief proceeding based on an alleged conspiracy by and between various state actors including Deputy Attorneys General and IDOC employees. The case cited by the State in support of its position is *Queen v. State*, 146 Idaho 5002, 198 P.3d 731 (Ct. App. 2008), which involved a prosecution and the State's duties under I.C.R. 16(b)(6) and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Thus, its holding is not instructive on the legal issue at hand, other than a reminder that a prosecutor's *Brady* obligations apply at the post-conviction level, as well as the trial level (*Id.* at p. 505, quoting *Kyles v. Whitely*, 514 U.S. 419, 437 (1995)). In other words, the State has a continuing duty to provide to Petitioner any exculpatory or impeaching evidence **regardless** of any requested discovery.

The *Crown v. State Department of Agriculture*, 127 Idaho 175, 898 P.2d 1088 (1995), cited by the State is also inapposite. The discovery served on the non-party individual in the *Crown* case was clearly not authorized by the discovery rules. Petitioner here has not served any discovery requests on non-party individuals.

The State also suggests that Petitioner could sue the IDOC directly. He cannot. No cause of action occurs against any State actor for a *Brady* violation until a court vacates his conviction and/or sentence (see *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994)). Petitioner's only recourse to challenge his conviction and/or sentence is the present proceeding.

Finally, the State appears to suggest that because Petitioner can subpoena and depose non-parties and request documents, its obligations to respond and answer discovery requests is somehow lessened. Petitioner's ability to subpoena non-parties has nothing to do with whether the State party in this case encompasses the IDOC or whether the State has complied with the discovery rules.

Petitioner agrees with the State that not all State agencies can be brought into this proceeding as a party. As earlier stated, what brings the IDOC within the ambit of the State/Respondent party in these proceedings is the nature of the allegations in the AMENDED PETITION. Petitioner is seeking relief for what specific State actors have done – some of these actors are employees and agents of the IDOC. But for the alleged conspiracy herein, Petitioner

concedes that he would not be entitled to the information sought involving the IDOC. The IDOC actors, however, are very much a part of why Petitioner seeks relief here.

### **C. THE STATE'S PRODUCTION**

#### ***Requests for Production Nos. 1-4***

I.R.C.P. 34 requires a party to provide documents in its "possession , custody or control" in whatever form it considers itself for purposes of this proceeding. The discovery responses here do not indicate whether the State has possession, custody or control of any of the documents requested. The State merely attempts to shield itself by claiming that "'Respondent does not control" third parties "who may have generated documents "as a result of" the filing of the instant case . . . "' (see RESPONSE TO REQUEST NO. 1).

Also, the State attempts to bolster its position by claiming the Request is overbroad, that is,

"it would require Respondent to find and produce every document produced by anyone in relation to this case regardless of its potential relevance"

(see OBJECTION, p. 5)

It is not for the State to determine what is relevant or not. The information sought is no different than that from a criminal defendant who seeks investigator reports prepared as a result of an alleged crime. Petitioner has alleged the disclosure of a packet of materials which reflect a significant conspiracy to deprive him of due process – he is entitled to any investigatory reports prepared by the IDOC relating to the disclosure of the packet and the veracity of the documents contained therein.

#### ***Request for Production Nos. 5 & 6***

The State claims that the original Prosecutor and Sheriff files have been produced. They have not. If these documents cannot be produced because they have been lost or destroyed, the

State must say so and explain how this happened. Rule 34 mandates the production of these files. The State disingenuously asserts that these REQUESTS are overly broad and burdensome when, in fact, it cannot find the files.

The State's illustration relating to the State Appellate Public Defender files is absurd on its face and only demeans its position here (OBJECTION, p. 7). The IDOC does not represent citizens charged with crimes.

### ***Interrogatories***

The State answered these INTERROGATORIES with no answer, that is, the State has "no knowledge" or the information "is not within the control of the Office of the Attorney General". Its position here is dishearteningly disingenuous. The IDOC is a party to these proceedings as previously argued because of the nature of the allegations in the AMENDED PETITION. Thus, the State has a duty to legitimately seek out the information sought. Moreover, the test under the Rule is that the responding party "shall furnish such information as is available to the party". Thus, regardless of whether the IDOC is a party to these proceedings, as an agent of the State, the State has a duty to make the information available to Petitioner.

### ***Requests for Admission***

The State's responses to the REQUESTS FOR ADMISSION are wholly inadequate as set forth in Petitioner's initial MEMORANDUM IN SUPPORT OF MOTION TO COMPEL, pp. 7, 8). The discovery rules specifically reject a response based on lack of information unless the responding party sets forth a reasonable inquiry.

The assertion that Mr. Jorgensen cannot directly contact an employee of the IDOC (OBJECTION, p. 10) is of no consequence, even if true. Mr. Jorgensen can meet his duty to inquire through Mr. Kubinski, if necessary. The fact that Petitioner has filed a Notice of Tort

Claim is totally inconsequential for purposes of the State's duty to provide, in good faith, proper and adequate information through the discovery process.

***Jorgensen Affidavit***

The AFFIDAVIT OF KENNETH K. JORGENSEN seems to stand for the proposition that different attorneys within the Attorney General's Office represent different State agencies. It is perhaps more accurate to say that different attorneys are assigned to represent different agencies. But the distinction is neither here nor there. What is significant and ironic is that Petitioner seeks the very information set out in Mr. Jorgensen's Affidavit, para 2 & 3. But Petitioner seeks and is entitled to the identity of the "employee of the Department of Correction" as well as any investigatory report prepared by him or her, as well as that of Mr. Birch (*Id.*).

***Work-Product Privilege***

The wholesale failure of the State to raise the work-product privilege with respect to its answers and responses has been previously stated in Petitioner's MEMORANDUM IN SUPPORT OF MOTION TO COMPEL, pp. 11, 12).

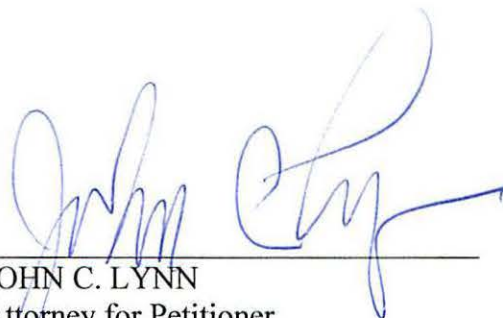
This privilege is not a blanket "catch all" justifying information withheld. It is quite precise and the discovery rules were written purposely to disallow the *ad hoc* use of this privilege (I.R.C.P. 26(b)(5)(A)). The State's use of it here underscores its dismissive approach to a very serious matter and Petitioner's right to glean information relating to his claim. This is not just a "fishing expedition" and no one would think so based on the record at hand.

**CONCLUSION**

This is not a typical civil case where a governmental agency, or its individual agents, are sued for some alleged wrongdoing which, if proven, entitles the plaintiff to damages. Here, the Petitioner ( not plaintiff) was prosecuted by the State of Idaho with the full weight and force of

several agencies – the Jerome Sheriff's Office, the Idaho State Police, the Idaho State Laboratory and the Attorney General's Office. Petitioner lost his freedom for life as a result of the immense resources, effort and power of the State of Idaho. Now, Petitioner claims that some of these State agents abused that power. He has a due process right to challenge any State conduct that allegedly abused State power. Thus, the right to discovery in this type of process necessarily encompasses any such State actors as a matter of fairness in addition to all the legal arguments set forth above.

DATED This 15 day of January, 2013.

  
\_\_\_\_\_  
JOHN C. LYNN  
Attorney for Petitioner

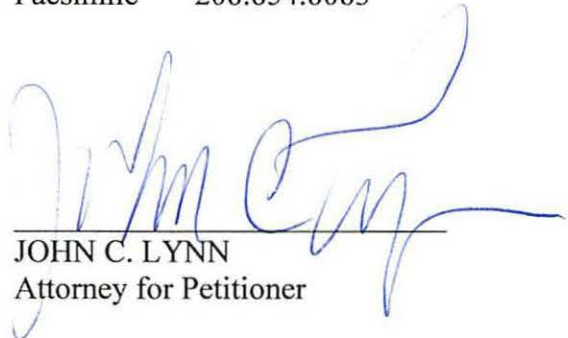
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 15 day of January, 2013, I served a true and correct copy of the foregoing document, as indicated below:

KENNETH K. JORGENSEN  
Deputy Attorney General  
Special Prosecuting Attorney  
State of Idaho  
700 W. State St. 4<sup>th</sup> Floor  
P. O. Box 83720  
Boise, ID 83720-0010

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Electronic Mail
- ☐ Facsimile 208.854.8083

DATED This 15 day of January, 2013.

  
\_\_\_\_\_  
JOHN C. LYNN  
Attorney for Petitioner



JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr.  
Suite 240  
Eagle, ID 83616  
Phone: 208.685.2333  
Email: johnlynn@fiberpipe.net  
ISB #1548

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Phone: 208.735.5158  
Fax: 208.734.2383  
ISB# 7450

Attorneys for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2013 JAN 16 PM 3 55  
*Michelle Emerson*  
BY *[Signature]* CLERK  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

JAMI DEAN CHARBONEAU, )  
)  
Petitioner, )  
v. )  
)  
THE STATE OF IDAHO, )  
)  
Respondent. )  
\_\_\_\_\_ )

Case No. CV-2011-638

**AFFIDAVIT OF JOHN C. LYNN  
IN SUPPORT OF PETITIONER'S  
REPLY TO OBJECTION RE:  
MOTION TO COMPEL**

STATE OF IDAHO )  
:ss  
State of Idaho )

I, JOHN C. LYNN, having been first duly sworn upon oath, depose and say as follows:


1. I am co-counsel of record for the above-named Petitioner.

AFFIDAVIT OF JOHN C. LYNN IN SUPPORT OF PETITIONER'S REPLY TO STATE'S OBJECTION RE: MOTION TO COMPEL

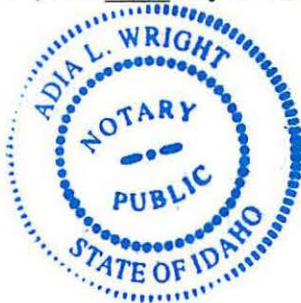



2. Attached hereto as Exhibit A is a true and correct copy of an electronic exchange on December 17 and 18, 2012, by and between Mr. Jorgensen, counsel for the State, and Brian Tanner, co-counsel for Petitioner.

DATED This 15 day of January, 2013.

  
JOHN C. LYNN  
Attorney for Petitioner

SUBSCRIBED AND SWORN To before me, a Notary Public in and for the State of Idaho, this 18<sup>th</sup> day of January, 2013.



  
Notary Public for Idaho  
My Commission Expires: 9/20/17

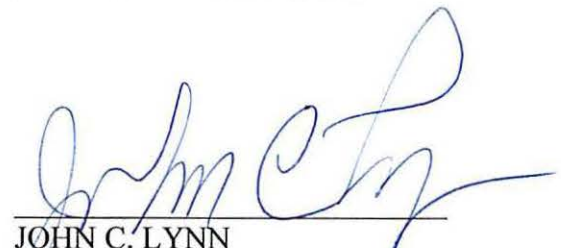
### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 15 day of January, 2013, I served a true and correct copy of the foregoing document, as indicated below:

KENNETH K. JORGENSEN  
Deputy Attorney General  
Special Prosecuting Attorney  
State of Idaho  
700 W. State St. 4<sup>th</sup> Floor  
P. O. Box 83720  
Boise, ID 83720-0010

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Electronic Mail
- ☐ Facsimile 208.854.8083

DATED This 15 day of January, 2013.

  
JOHN C. LYNN  
Attorney for Petitioner

**John Lynn**

---

**From:** Brian Tanner <briantanner.esq@gmail.com>  
**Sent:** Tuesday, December 18, 2012 8:48 AM  
**To:** John Lynn  
**Subject:** Fwd: Charboneau

Should we serve discovery on the IDOC?

----- Forwarded message -----

**From:** Jorgensen, Ken <[redacted]>  
**Date:** Tue, Dec 18, 2012 at 8:13 AM  
**Subject:** RE: Charboneau  
**To:** Brian Tanner <briantanner.esq@gmail.com>  
**Cc:** "Panther, Paul" <[redacted]>

Dear Brian:

It is not my position that the attorney general's office does not represent the Idaho Department of Correction. It is my position that the Idaho Department of Correction is not a party to this action, any more than any other department or agency of state government. It is further my position that my appointment in this case effectively means I am functioning as a deputy of the Jerome County Prosecutor's Office.

For these reasons my appointment does not give you more access to discovery through the Department than if I had not been appointed. I have fully complied with all civil discovery rules. The discovery you seek is, I believe, available to you through the normal processes of civil discovery. If you want discovery from the Department of Correction, please deal with the attorneys that represent the Department of Correction. I would be happy to facilitate such contact and discovery, but remind you that *I do not represent the Department of Correction.*

Sincerely,

Ken Jorgensen

[ken.jorgensen@idoc.id.gov](mailto:ken.jorgensen@idoc.id.gov)

**From:** Brian Tanner [mailto:briantanner.esq@gmail.com]  
**Sent:** Monday, December 17, 2012 3:27 PM  
**To:** Jorgensen, Ken  
**Subject:** Charboneau

Ken,

In response to our requests for discovery, from my review, it does not appear that we received any answers. We believe this is important going forward, given the unique nature of this case. We hope to receive answers to our discovery. My client has requested that I ask you to reconsider your responses and provide to us the information we requested. Can you do this?

The attorney general's office represents the state of Idaho, including its various agencies correct?

Is there any authority for your position that the attorney general's office does not represent the IDOC or any other agencies mentioned in our discovery requests? Do you have any case law on that?

Are we expected to contact different deputy AG's to set depositions and treat them like non-parties?

Thank you,

Brian M. Tanner

--

Brian M. Tanner

Attorney at Law | Tanner Law, PLLC

137 Gooding Street West

Twin Falls, Idaho 83301

208-734-3388 | Fax: 208-734-3383

[brian@tannerlaw.com](mailto:brian@tannerlaw.com)

**Electronic Privacy Notice.** This e-mail, and any attachments, contains information that is, or may be, covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Thank you in advance for your cooperation.

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME  
233 WEST MAIN STREET  
JEROME, IDAHO 83338

JAIMI DEAN CHARBONEAU #22091, PLAINTIFF, )  
DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
JEROME COUNTY IDAHO )

Plaintiff,

vs

STATE OF IDAHO, DEFENDANT, )  
2013 JAN 23 AM 10 08  
Michelle Emerson  
CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK )

Defendant.

Case No: CV-2011-0000638

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

**Motion to Compel by Telephone in BLAINE COUNTY: Wed., January 30, 2013 10:00 AM**  
Judge: Robert Elgee

*\*\*Mr. Jorgensen to initiate phone call to Blaine County at 208-788-5521\*\**

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Wednesday, January 23, 2013.

Counsel: Mailed ☒ Hand Delivered \_\_\_\_\_

Kenneth K. Jorgensen  
Deputy Attorney General  
Special Prosecuting Attorney  
P.O. BOX 83720  
BOISE ID 83720-0010

Counsel: Mailed ☒ Hand Delivered \_\_\_\_\_

John C. Lynn  
Attorney at Law  
776 E. Riverside Drive  
Suite 240  
Eagle, ID 83616

Counsel: Mailed ☒ Hand Delivered \_\_\_\_\_

Brian M. Tanner  
Attorney at Law  
137 Gooding Street West  
Twin Falls, ID 83301

Judge Elgee  
U.S. Mail

Dated: Wednesday, January 23, 2013  
Michelle Emerson  
Clerk Of The District Court

By: \_\_\_\_\_  
Seal of the District Court, Jerome County, Idaho  
Fifth Judicial District

Deputy Clerk



## COURT MINUTES

CV-2011-0000638

Jaimi Dean Charboneau vs. State of Idaho

Hearing type: Motion to Compel

Hearing date: 1/30/2013

Time: 10:00a.m.

Judge: Robert J. Elgee

Courtroom: District Courtroom-judicial Bldg

Court reporter: Susan Israel

Minutes Clerk: Crystal Rigby

Tape Number: DC

Party: Jaimi Dean Charboneau, Attorney: Brian Tanner, John Lynn

Party: State of Idaho, Attorney: Kenneth Jorgensen

| Counter # |   |
|-----------|---|
| 10.06     | Counsel present by phone, Mrs. Charboneau (Mother of Petitioner) present with Mr. Lynn  |
|           | Court introduces the case. Two issues: 1.- who is responsible for the State to responding to discovery requests, and 2.- what questions need answer.  |
| 10.11     | Mr. Lynn addresses the petitioner's motion to compel. The State is defined as the party, it doesn't separate agencies out. This is the same party that prosecuted Charboneau. If the information from the IDOC (State) doesn't get received, then the cost of investigation will cost a great deal more.  |
| 10.19     | Mr. Jorgensen responds, withdraws any objection re: certification of the motion to compel. Doesn't agree that the IDOC was or is part of the prosecution in this case, therefore is not a party in the case. Agrees that the State in this case is the same State that prosecuted Mr. Charboneau in the criminal case. The information being requested needs to be subpoenaed from the IDOC. Disagrees that this type of discover would be expensive or require a new suit. |
| 10.24     | Mr. Tanner responds about the issue with the subpoena. The information received from the IDOC is there are questions that still need answered. It may be that a new subpoena needs issued to acquire the information.<br><br>Mr. Lynn clarifies. Wants to know what happened to the original files from the Sheriff and the Prosecutor.   |
| 10.29     | Court comments.<br><br>Mr. Jorgensen clarifies about the prosecution be a special prosecutor for Jerome that happened and still happens to be employed by the AG's office.  |
| 10.31     | Court continues on the difference between a county prosecutor and an attorney general. Agrees that a subpoena doesn't take the place of discovery. Discusses an analogy that is on point with this motion.  |
| 10.46     | Mr. Jorgenson clarifies.<br><br>Court comments, these interrogatories need answered and Mr. Jorgenson has the authority. The IDOC is a State agency and the Attorney General's office represents all of the State agencies. The Court will draft the order.   |
| 10.54     | Court reviews the requests for admissions. Will take a 6 minute recess.   |
|           | Recess.   |



|       |  |
|-------|--|
| 11.01 | Back on record<br>Counsel still present by phone.  |
|       | Court responds to Mr. Jorgensen, not sure if the Jerome Prosecutor was handling the case if this ruling would be the same. Understands the Mr. Horgan's authority is limited and wouldn't have the access to the State agencies, but a Deputy Attorney General does have access to the State agencies.   |
| 11.04 | Mr. Lynn comments on the interrogatories and requests for production.  |
|       | Court inquires about work product privilege-criminal case work product, and current work product.  |
|       | Mr. Jorgensen responds that privilege is for both. The requests are broad.   |
| 11.08 | <p>Court comments, it needs to be clear in further requests where the privilege is being claimed-criminal case or current case.</p> <p>Mr. Jorgensen comments that all of the documents in the criminal case have been submitted to the Court. Has reviewed those documents and have not found anything to support the Petitioner's claims. Will allow the Court to decide if there is anything relevant.</p> <p>Court the main focus is what happened after the trial. If there is any evidence that is exculpatory that will trump privilege.</p>                            |
| 11.17 | <p>Court- interrogatory #1 needs to be answered in full-names, addresses, and numbers are not privileged.</p> <p>Mr. Jorgensen clarifies.</p> <p>Mr. Tanner comments about the deposition, learned emails were sent about the packet.</p> <p>Court- Mr. Jorgensen is to find out who else knew about the packet.</p> <p>Mr. Lynn comments.</p> <p>Mr. Jorgensen clarifies about the burden.</p> <p>Court – Mr. Jorgensen has the burden to answer interrogatories and make reasonable inquiry. The identity of the people need to be done first then if there is privilege</p> |
| 11.36 | <p>Court- interrogatory #2 needs to be answered</p> <p>Court- interrogatory #3 – has been done?</p> <p>Mr. Tanner and Mr. Lynn respond</p> <p>Court- #3 is done.</p> <p>Court- interrogatory #4- has been completed in the deposition of Hiskett.</p> <p>Mr. Lynn- any officers or inmates that are aware of the packet.</p> <p>Court- if Mr. Jorgensen has more information than it needs to be disclosed.</p>  |
| 11.42 | <p>Court- interrogatory #5 – same as #4.</p> <p>Court- interrogatory #6- needs answered (clarifies- referring to the packet not criminal file)</p> <p>Court- interrogatory #7-sames as #4</p> <p>Court- interrogatory #8-needs answered</p>  |



|       |   |
|-------|---|
|       | <p>Court- interrogatory #9-same as #4</p> <p>Court- interrogatory #10-same as #4</p> <p>Court- interrogatory #11- same as #4</p> <p>Court- interrogatory #12-same as #4</p> <p>Court- interrogatory #13- same as #4</p> <p>Court- interrogatory #14- needs answered</p>   |
| 11.52 | <p>Court-requests for production #1- broad and vague.</p> <p>Mr. Lynn clarifies.</p> <p>Court is not requiring production of #1.</p> <p>Court-requests for production #2-needs answered</p> <p>Court-requests for production #3-needs answered</p> <p>Court-requests for production #4-needs answered- 1989 to packet discovery date.</p> <p>Court-requests for production #5 &amp; 6- needs answered</p> <p>Court-requests for production #7- already answered. It may be possible that the Court hires a forensic expert to look into the deleted emails.</p> |
| 12.12 | <p>Court-requests for production #8- needs answered</p> <p>Court-requests for production #9- no answer unless different.</p> <p>Mr. Lynn believes #9-12 has been answered and request if needed they may be supplemented.</p> <p>Court-requests for production #9-12-no answer unless different.</p>  |
|       | <p>Court- Mr. Lynn is to prepare an order granting the motion to compel. All parties are represented by public expense and awarding fees would serve no purpose on this motion.</p> <p>Mr. Jorgensen requests 45 days to make inquiry and respond.</p> <p>Court- answers due 45 days from the signing of the order.</p>   |
| 12.19 | <p>Court- requests for admissions #1- needs answered</p> <p>Court- requests for admissions #2- needs answered</p> <p>Court- requests for admissions #3- needs answered</p> <p>Court- requests for admissions #4- needs answered</p> <p>Court- requests for admissions #5- needs answered</p>  |
|       | <p>Mr. Jorgensen inquires ethical breach</p> <p>Court responds, understands the position, may come to a protection order.</p>   |
|       | <p>Court will prepare the order.</p>  |
| 12.31 | <p>Mr. Lynn comments about delays in paying attorney's and Mr. Berry's by the county.</p>   |
|       | <p>Court responds, just signed authorization for Mr. Berry, but hasn't seen anything payment forms from the clerk re Mr. Tanner and Mr. Lynn. Reminds counsel that copies of all filings need to be email to the Law Clerk.</p>   |
| 12.34 | <p>Recess</p>   |

## Traci Brandebourg

**From:** Robert Elgee <relgee@co.blaine.id.us>  
**Sent:** Tuesday, February 05, 2013 10:40 AM  
**To:** Jorgensen, Ken; johnlynn@fiberpipe.net; Briantanneresq@gmail.com  
**Cc:** John Horgan; Traci Brandebourg  
**Subject:** Charboneau v. State, Jerome case #11-638, EXPENSES

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO  
2013 FEB 5 AM 10 53  
Michelle Emerson

Gentlemen:

Under current practice, I get invoices from the petitioners attorneys, and Mr. Tom Berry as their investigator. I note in Mr. Berry's invoices some work he is doing which leads me to believe that he is investigating some aspects of the actual murder itself. I wonder why the County should be paying for this work *at this time*. I raise this issue only because I think it is necessary in my role as sole overseer of the public purse to avoid paying for things that are not or may not become necessary. Accordingly, I am unclear why there needs to be any investigation into the circumstances of the murder right now. I certainly understand that if Tira Arbaugh's letter is found to be valid that may raise certain issues, and one of those would obviously be a question, of: "OK, let's assume the letter is valid. So what, either it's not exculpatory in any sense, or it doesn't raise anything new." (I am not suggesting that is the case, just suggesting that issue may be raised.) So, I assume if that issue is raised, petitioner's attorney's want to be ready to show how her letter fits into the circumstances of the murder. I understand that. What I want to know is why that needs to be addressed NOW?

My sole interest for sending this is I don't want Jerome County incurring unnecessary expenses. Petitioner could probably spend thousands of dollars investigating all sorts of questions about the murder that do not bear at all on the post-conviction allegations. Unless I am shown why that is necessary in some fashion I am not likely to authorize payment for that. It's that simple.

Resolving that issue is more complex. Counsel could certainly agree on a procedure for resolving issues in this case. Or we could all meet and do so. Then I would know where the expenses should be focused. In addition, because of the way expenses are submitted or overseen by the Court, I do not want the State to feel like there is some sort of procedure that goes on ex-parte where petitioner's attorneys get an opportunity to "educate the judge," under the guise of getting expenses approved. That is not appropriate, nor is it necessarily appropriate for the state to see where the petitioner's investigative efforts or expert fees are expended.

I invite you to discuss this issue among yourselves, or we can have a discussion on the record by phone, or someone can apply to have a separate judge appointed to oversee expenses to avoid the ex-parte issue. If a money judge is appointed, it still doesn't solve the problem unless the judge overseeing expenditures knows where the money is going and why. I don't want to have to suddenly decide that some work done by counsel or Mr. Berry will not be paid for.

I will have the court clerk in Jerome make a copy of this email and file stamp it and put it in the file. I have sent her a copy of this, and a copy to John Horgan, Jerome Co. Prosecutor.

*Robert J. Elgee*  
Blaine County District Judge



Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
[ ISB No. 7450]

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 FEB 5 PM 3 03

*Michelle Emerson*  
BY  
DEPUTY CLERK

*Attorney for the Petitioner*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

Case No. CV. 2011-638

**NOTICE OF SERVICE**


**NOTICE IS HEREBY GIVEN** That Brian M. Tanner, Attorney of record for the above-named Petitioner, served a true and correct copy of **MOTION TO APPOINT FORENSIC EXPERT AT COUNTY EXPENSE**, by fax upon the following attorney at the address below:  
DATED this 5<sup>th</sup> day of February, 2013, to the following:

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
Fax: (208) 854-8071

**JOHN C. LYNN**  
Attorney at Law  
776 E. Riverside Dr.  
Eagle, Idaho 83616  
Fax: (208) 685-2355

Dated this 5<sup>th</sup> of February, 2013.

TANNER LAW, PLLC.

  
Tirza C. Delgado,  
Legal Assistant

NOTICE OF SERVICE - 1

BRIAN M. TANNER  
Attorney at Law  
137 Gooding Street W.  
Twin Falls, ID. 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
Idaho State Bar #7450

JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr.  
Suite 200  
Eagle, ID 83616  
Phone: 208.685.2333  
Fax: 208.685.2355  
Email: johnlynn@fiberpipe.net  
ISB #1548

Attorneys for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 FEB 5 PM 3 03

*Michelle Emerson*  
CLERK

BY \_\_\_\_\_  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO APPOINT FORENSIC  
EXPERT AT COUNTY EXPENSE

COMES NOW, the Petitioner, by and through counsel, hereby requests from the Court, an Order which will allow the Petitioner to hire forensic experts for the purpose of finding and evaluating emails written by staff at the Idaho Department of Corrections, which are found in the Petitioner's Amended Application for Post Conviction Relief and emails from Officer Hiskett,

who is also an employee at the Idaho Department of Corrections in Orofino, Idaho. This request was discussed at the motion to compel hearing on January 30, 2013.

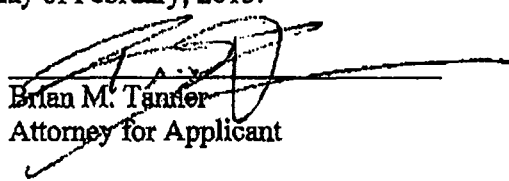
The Attorney General's Office has been contacted regarding this request and has no legal objection to this motion. The Attorney General did express a concern about the cost of the evaluation.

This office also contacted by telephone Josiah Roloff, at Global CompuSearch LLC on February 4, 2013 in order to inquire about costs and to provide a brief assessment of this post conviction case and the work which will be required. Global CompuSearch LLC agreed to charge \$150.00/hr, as opposed to their traditional private fee rate of \$250.00 per hour. In addition, Mr. Roloff stated that initial discovery draft assistance would be somewhere from 2 – 8 hours. He also stated that depending on what would work best they could start on the low end and re-apply for funds as necessary or apply them into the next step as the case proceeds.

The fee schedule and the Curriculum Vitae for Global CompuSearch LLC is attached for the Court's review.

Accordingly, the Petitioner requests appointment of Global CompuSearch LLC so that they may begin their discovery as expeditiously as possible.

Respectfully Submitted This <sup>th</sup>4 day of February, 2013.

  
Brian M. Tanner  
Attorney for Applicant

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 FEB 6 AM 11 31

*Michelle Emerson*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME  
BY Michelle Emerson  
DEPUTY CLERK

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

ORDER APPOINTING GLOBAL  
COMPUSEARCH, LLC AS COMPUTER  
FORENSIC EXPERTS AT COUNTY  
EXPENSE

The Court, having considered the Petitioner's Motion for appointment and having found good cause therein, DOES HEREBY appoint Global Compusearch, LLC as forensic experts in order to analyze and discover emails drafted by employees at the Idaho Department of Corrections.

(1) Global Compusearch, LLC will be compensated as follows:

Consulting/Computer Forensics: \$150.00 per hour for case review with written analysis and/or \$1,500 per day for hearings, pre-trial consulting or trial plus expenses.

Mobile Media Forensics: \$150.00 per hour for case review with written analysis and/or \$1,500 per day for hearings, pre-trial consulting, trials plus expenses.


Various Expenses: Government based per diem rates for any hotels or airfare or rental car charges that may be required.

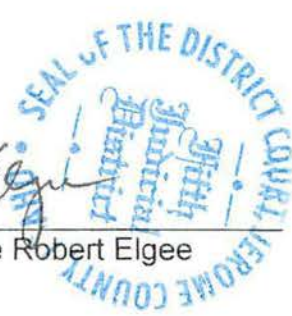


(2) Global Compusearch, LLC should submit periodic interim requests for payment to the Court, through the Jerome County Clerk of Court, not less than once every sixty (60) days. Experts must understand that counsel they work with may direct and control their activities to some extent, but counsel are not agents for the Court or the County that is paying expert's fees or expenses, and counsel have no authority to approve expenditures or bind the Court or the County to make payment. Payment to experts must be approved by the Court. Therefore, before experts do work or incur expenses that may be questionable, they may wish to seek authorization from the Court in advance, or to determine whether the Court will impose spending limits on particular activity. These motions may be made ex-parte and filed under seal.

(3) A copy of this order shall be served on experts by Charboneau's counsel, and a certificate of mailing or other service shall be filed with the Court. It is unclear at this point whether experts here are being hired as the Court's experts, or retained as experts on behalf of Charboneau. Counsel for Charboneau should consider the ramifications carefully and have this issue cleared up at the earliest opportunity. The Court has no current position in that regard.

DATED this 6 day of February, 2013.

  
Honorable Judge Robert Elgee



I.C.R. RULE 49 (b)  
NOTICE OF ORDER

I, Deputy Clerk for the County of Jerome, do hereby certify that on the 6 day of February, 2013, I have filed the original and caused to be served a true and correct copy of the above and foregoing document:

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720  
Fax: 208.854.8071

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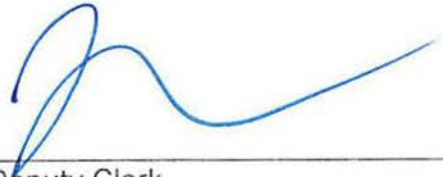
JOHN C. LYNN  
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Eagle, ID 83616  
(Fax) 208.685-2355

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Telecopy *emailed*

BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Fax: 208.734.2383

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Telecopy

*cc: Hargan*

  
\_\_\_\_\_  
Deputy Clerk

*6-27-13*  
*cc: Auditor*

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301  
Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
[ ISB No. 7450]

*Attorney for the Petitioner*

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 FEB 6 PM 3 01

BY *M. J. G. Gansor*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

Case No. CV. 2011-638

**NOTICE OF SERVICE**

**NOTICE IS HEREBY GIVEN** That Brian M. Tanner, Attorney of record for the above-named Petitioner, served a true and correct copy of **ORDER APPOINTING GLOBAL COMPUSEARCH, LLC FORENSIC EXPERT AT COUNTY EXPENSE**, by E-mail upon the following attorney at the address below:

DATED this 6th day of February, 2013, to the following:

**Global Compusearch, LLC**  
JosiahR@gcsforensics.com

Dated this 6th of February, 2013.

TANNER LAW, PLLC.

*Tirza C. Delgado*  
Tirza C. Delgado,  
Legal Assistant

NOTICE OF SERVICE - 1



DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 FEB 6 AM 11 31

*Michelle Emerson*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF

IDAHO, IN AND FOR THE COUNTY OF JEROME  
BY                       
CLERK

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

ORDER APPOINTING GLOBAL  
COMPUSEARCH, LLC AS COMPUTER  
FORENSIC EXPERTS AT COUNTY  
EXPENSE

The Court, having considered the Petitioner's Motion for appointment and having found good cause therein, DOES HEREBY appoint Global Compusearch, LLC as forensic experts in order to analyze and discover emails drafted by employees at the Idaho Department of Corrections.

(1) Global Compusearch, LLC will be compensated as follows:

Consulting/Computer Forensics: \$150.00 per hour for case review with written analysis and/or \$1,500 per day for hearings, pre-trial consulting or trial plus expenses. . . .

Mobile Media Forensics: \$150.00 per hour for case review with written analysis and/or \$1,500 per day for hearings, pre-trial consulting, trials plus expenses.


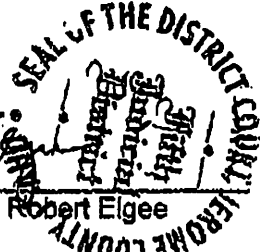
Various Expenses: Government based per diem rates for any hotels or airfare or rental car charges that may be required.

ORDER APPOINTING COMPUTER FORENSIC EXPERTS AT COUNTY EXPENSE - 1

(2) Global Compusearch, LLC should submit periodic interim requests for payment to the Court, through the Jerome County Clerk of Court, not less than once every sixty (60) days. Experts must understand that counsel they work with may direct and control their activities to some extent, but counsel are not agents for the Court or the County that is paying expert's fees or expenses, and counsel have no authority to approve expenditures or bind the Court or the County to make payment. Payment to experts must be approved by the Court. Therefore, before experts do work or incur expenses that may be questionable, they may wish to seek authorization from the Court in advance, or to determine whether the Court will impose spending limits on particular activity. These motions may be made ex-parte and filed under seal.

(3) A copy of this order shall be served on experts by Charboneau's counsel, and a certificate of mailing or other service shall be filed with the Court. It is unclear at this point whether experts here are being hired as the Court's experts, or retained as experts on behalf of Charboneau. Counsel for Charboneau should consider the ramifications carefully and have this issue cleared up at the earliest opportunity. The Court has no current position in that regard.

DATED this 6 day of February, 2013.

  
HONORABLE JUDGE ROBERT ELGEE  


ORDER APPOINTING COMPUTER FORENSIC EXPERTS AT COUNTY EXPENSE - 2

**I.C.R. RULE 49 (b)**  
**NOTICE OF ORDER**

I, Deputy Clerk for the County of Jerome, do hereby certify that on the 6 day of February, 2013, I have filed the original and caused to be served a true and correct copy of the above and foregoing document:

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720  
Fax: 208.854.8071

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JOHN C. LYNN  
Attorney at Law  
778 E. Riverside Dr., Suite 240  
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(Fax) 208-685-2355

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BRIAN M. TANNER  
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Twin Falls, ID 83301  
Fax: 208.734.2383

☐ U.S. Mail, Postage Prepaid  
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☐ Overnight Mail  
☒ Telecopy

  
\_\_\_\_\_  
Deputy Clerk

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 FEB 6 PM 3 51

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF JEROMEBY Jerome Emerson  
CLERK  
DEPUTY CLERK


|                       |   |                            |
|-----------------------|---|----------------------------|
| JAMI DEAN CHARBONEAU, | ) |                            |
|                       | ) |                            |
| Petitioner,           | ) | Case No. CV-2011-638       |
| v.                    | ) |                            |
|                       | ) | <b>ORDER GRANTING</b>      |
| THE STATE OF IDAHO,   | ) | <b>PETITIONER'S MOTION</b> |
|                       | ) | <b>TO COMPEL</b>           |
| <u>Respondent.</u>    | ) |                            |

This Court having considered the parties' respective briefing and oral argument upon Petitioner's MOTION TO COMPEL, filed on or about December 31, 2012 and good cause appearing;

IT IS HEREBY ORDERED That the Petitioner's MOTION TO COMPEL is granted and the Respondent, State of Idaho, is ordered to answer and respond to Petitioner's FIRST SET OF INTERROGATORIES, FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS and FIRST SET OF REQUESTS FOR ADMISSIONS, pursuant to this Court's directives put on the record at the telephonic hearing hereon held on January 30, 2013. Such answers and responses will be served upon Petitioner no later than forty-five (45) days from the issuance of this ORDER.

IT IS FURTHER HEREBY ORDERED that no fees or costs will be assessed against Respondent as both parties are represented at public expense and no purpose would be served thereby.

DATED This 1 day of February, 2013.

  
\_\_\_\_\_  
HON. ROBERT ELGEE  
District Judge



**I.C.R. RULE 49 (b)**  
**NOTICE OF ORDER**

Feb I, Deputy Clerk for the County of Jerome, do hereby certify that on the 6 day of ~~January~~, 2013, I have filed the original and caused to be served a true and correct copy of the above and foregoing document:

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720  
Fax: 208.854.8071

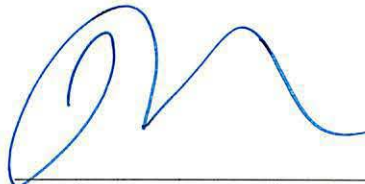
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Attorney at Law  
776 E. Riverside Dr., Suite 240  
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\_\_\_\_\_  
Deputy Clerk

ORIGINAL

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 FEB 6 PM 3 51

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

BY Michelle Emerson  
DEPUTY CLERK

JAIMI DEAN CHARBONEAU, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
STATE OF IDAHO, )  
 )  
Respondent. )  
 )

Case No. CV-2011-638

---

**ORDER ON MOTION TO COMPEL**

---

**Appearances:**

For Petitioner Charboneau: John Lynn, Boise, and Brian Tanner, Gooding

For Respondent State of Idaho: Deputy Attorney General Kenneth Jorgensen

**I. PROCEDURAL HISTORY AND FACTS ADDUCED THUS FAR**

Charboneau was convicted following a jury trial for the murder of Marilyn Arbaugh in 1984 and sentenced to death. He appealed. His conviction was affirmed, the sentence vacated, and the case remanded for sentencing. *State v. Charboneau*, 116 Idaho 129 (1989). Following remand from the Idaho Supreme Court Charboneau was sentenced to life in prison, where he has resided ever since. In the recent past, a copy of a letter allegedly authored by one of Marilyn Arbaughs' daughters, Tira Arbaugh, who



was present at the murder scene, surfaced in the possession of Charboneau at the Idaho State Penitentiary. The letter was dated September 7, 1989, which would have been around the time of the remand and resentencing. It was addressed to Judge Becker, the sentencing judge at Charboneau's original sentencing, but there is no indication whether he ever saw it. The sentencing on remand was conducted by the Hon. George Granata. The letter could be characterized as shedding new light on some of the circumstances surrounding the murder, and discloses, among other things, an alleged instruction to conceal evidence (a gun) by the original prosecutor in the case, who is named in the letter by Tira Arbaugh. Depending on one's view, the content of the letter could also be characterized as evidence ranging from "fraudulent hearsay" to "explosive."

Charboneau has filed another in a long string of post-conviction claims. Upon initial review of the new petition, this Court was reluctant to even appoint counsel, being of the opinion that Charboneau's new claims could hardly be true. He alleges in this new petition that he received a copy of this letter purportedly authored by Tira Arbaugh, along with some other important documents, from an employee at the prison, and that this letter had allegedly been intercepted from his mail by personnel at the prison and withheld from him until about one year or more ago, when it was turned over to him. A very recent deposition of this prison employee apparently confirms Charboneau's version of how he obtained possession of this letter. Counsel for Charboneau further assert that they have retained an expert who has confirmed the letter was authored by Tira Arbaugh. Other documents were allegedly delivered to Charboneau at the same time. These purport to be emails between prison employees which, *if true*, are

explosive. They are dated in 2004 and indicate that employees of the prison were being instructed to look out for a letter (apparently this letter from Tira Arbaugh) in Charboneau's mail, and that they were instructed to do so by the prosecutor (again identified by name) who handled the original murder trial. Thus, the same prosecutor's name has turned up in both Tira Arbaugh's letter and these emails between prison employees. At the present time, there are two possibilities. The first is that these emails are false and fraudulent. The second possibility is that they are true, and were preserved and copied by someone to prove when and how and why the Tira Arbaugh letter wound up in the possession of prison employees. It now appears to be true that, at a minimum, the letter has been traced to the possession of prison employees. This, in and of itself, would not seem unusual. It appears to be a regular and accepted practice that prison officials monitor prisoner's mail. However, the evidence thus far adduced (accepting the emails at face value) would seem to indicate that prison employees were instructed to look for this letter and confiscate it, precisely because the information in the Arbaugh letter cast doubt on some aspects of the murder case. These emails could not be more detailed in what they describe, and who is being asked to do what, and why. It is doubtful that Charboneau himself could have written them in a fashion more helpful to his cause. Putting the facts together, *if they prove to be true*, one could argue that exculpatory evidence has not only *not* been brought forth voluntarily, as required by law, but has been deliberately concealed.

The Court has engaged in this detailed examination of the case, and commented on some of the evidence that has been presented, because it is exceedingly important in this proceeding to understand what has happened thus far, what the allegations are,

and what has been and is being sought in discovery, and why. Substantial and serious questions have been raised about where this letter came from and how it came to be in the possession of prison personnel, why it was in their possession, and when it got there, and whether it was deliberately confiscated and/or withheld. Charboneau's counsel have moved the Court for an Order compelling the state to answer discovery requests authorized by the Court pursuant to I.C.R. Rule 57(b). The State responded, raising questions about the authority of the deputy attorney general handling this case to investigate and answer discovery. The matter came before the Court for hearing on January 30, 2013. Following resolution of the authority issue, the Court addressed the motion to compel, and determined the scope and extent of amended answers that will be forthcoming from the State. Mr. Lynn was directed to prepare an order covering those amended answers. In this order, the Court will address issues surrounding the nature of evidence sought in discovery, the extent of Mr. Jorgensen's responsibilities to the Court, and the authority he is cloaked with as counsel for the State.

## **II. MATTERS ESTABLISHED**

The following matters are established, or the Court has made the following determinations thus far:

- 1) This is no fishing expedition by counsel for Charboneau. The matters sought in discovery are serious and real, and there are objective, ascertainable facts supporting their search.
- 2) Discovery requests remain outstanding, and must be signed by a party representing the state of Idaho. In general, before signing discovery responses, an

attorney must conduct some investigation or "reasonable inquiry." See, e.g., I.R.C.P.

11(a)(1) and Rule 26(f).

3) The state is represented by Deputy Attorney General Kenneth Jorgensen.

Although this may be a fortuitous circumstance, state agencies such as the State Department of Corrections ("IDOC") are represented in the courts of Idaho by the Office of the State Attorney General. I.C. § 67-1401, provides:

Except as otherwise provided in this chapter, it is the duty of the attorney general:

(1) To perform all legal services for the state and to represent the state and all departments, agencies, offices, officers, boards, commissions, institutions and other state entities, in all courts and before all administrative tribunals or bodies of any nature. Representation shall be provided to those entities exempted pursuant to the provisions of section 67-1406, Idaho Code. Whenever required to attend upon any court or administrative tribunal the attorney general shall be allowed necessary and actual expenses, all claims for which shall be audited by the state board of examiners.

(2) To advise all departments, agencies, offices, officers, boards, commissions, institutions and other state entities in all matters involving questions of law.

4) For purposes of conducting an investigation to respond to discovery, there is no practical difference between Mr. Jorgenson making inquiry of IDOC about current matters, or such investigation for discovery being conducted by some other deputy attorney general who may be "assigned" to IDOC. The only person the Court has before it in a representative capacity is a deputy attorney general.

5) With respect to Requests for Production, the rules of discovery require a responding party to provide the requested materials when he has the practical ability to obtain them.

Under Rule 34, control does not require that the party have legal ownership or actual physical possession of the documents at issue; rather, documents are considered to be under a party's control when that party

has the right, authority, or practical ability to obtain the documents from a non-party to the action.

*Tiffany (NJ) LLC v. Andrew*, 276 F.R.D. 143, 148 (S.D. N.Y. 2011) (quoting *In re NTL, Inc. Sec. Litig.*, 244 F.R.D. 179, 195 (S.D.N.Y.2007). “[A] party may be ordered to produce a document in the possession of a non-party if that party has a legal right to obtain the document or has control over the entity who is in possession of it.” *Soto v. City of Concord*, 162 F.R.D. 603, 619-20 (N.D. Cal. 1995)

6) Mr. Jorgensen contends he lacks authority or control over IDOC. In his capacity as a deputy attorney general, he has as much right, authority or practical ability to obtain records and documents from IDOC, and as much authority or control over IDOC, as any other deputy attorney general who might be appointed by either the Court or the Office of the Attorney General to answer discovery on behalf of the state of Idaho. The Court places little or no weight at present on whether Mr. Jorgensen has been “assigned” to represent IDOC.

7) The Court sees no conflict of interest whatsoever in Mr. Jorgensen making inquiry of a state agency (that he is authorized by statute to represent) for discovery purposes, and his current position representing the state of Idaho on post-conviction relief. The interests of IDOC in preserving records and documents from disclosure, or claiming privilege, and/or responding to discovery, and the interests of the state of Idaho in defending itself from Charboneau’s claims, are one and the same.<sup>1</sup>

---

<sup>1</sup> The ability of IDOC to defend itself independently here will never be infringed or hampered, and certainly not by present discovery proceedings. IDOC maintains the ability to bring independent motions for protective orders at any and all times. The Court will address later in this Order conflicts of interest, if any, caused by conflicting directives given Mr. Jorgensen by his colleagues in the AG’s office.

8) Charboneau's discovery seeks evidence that is exculpatory, or evidence of a conspiracy by state agents to conceal exculpatory evidence. The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecutor. *Brady v. Maryland*, 373 U.S. 83 (1963). Evidence may also be exculpatory because it is impeaching. *Queen v. State*, 146 Idaho 502, 504 (2008) "The duty of disclosure enunciated in *Brady* is an obligation of not just the individual prosecutor assigned to the case, *but of all government agents having a significant role in investigating and prosecuting the offense.*" *Id.* at 504 (emphasis added). Whether a failure to disclose is in good faith or bad faith, the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable. *Kyles v. Whitley*, 514 U.S. 419, (1995). For this reason, in ruling on Charboneau's motion to compel, the Court has already concluded that there are very few privilege claims that might be asserted by any government agent or entity as a reason for failure to disclose what is sought. Any government agent or employee that comes across or is privy to information that may be deemed exculpatory or impeaching will carry a heavy burden to justify any failure to disclose it, with or without direct request. Moreover, failing to disclose or concealing evidence of a conspiracy, past or present, to deprive one of evidence that may bear on guilt or punishment in a murder case may carry dire criminal or civil consequences.

The Court takes the view that complete and thorough discovery in this particular case is a must. It is therefore a matter of the highest necessity to have a state agent that can respond to, inquire about, and sign off on outstanding discovery. In this case,

that duty has fallen to Mr. Kenneth Jorgensen, at least in the short term. Despite his view to the contrary, he is the right person in the right place at the right time.

### **III. DUTIES OF COUNSEL FOR THE STATE**

Mr. Jorgensen filed an Affidavit of Kenneth Jorgensen in support of his Objection to Petitioner's Motion to Compel. At paragraph 4 of his Affidavit, he recites that his immediate supervisor, Paul Panther, has informed him that Charboneau had filed a tort claim against IDOC, and that "because of the potential for litigation arising from the tort claim, all contact with employees of the Department regarding this case should be arranged through attorneys representing the Department. The basis for that instruction was that the Department needed to be aware of discovery that might affect the potential tort litigation." Mr. Jorgensen goes on to state: "I do not represent the Department of Correction in any capacity. Upon being informed that I am not to contact employees of the Department without the approval of its counsel, I believe it is my ethical duty to not do so. I have not requested permission from counsel for the Department of Correction to contact its employees..."<sup>2</sup>

The Court sees this as a manufactured ethical dilemma which has thus far successfully prevented any meaningful response to discovery. First, the Court sees little basis for the instruction not to talk to IDOC employees because of the assertion that the Department "needed to be aware of discovery that might affect the potential tort litigation." The Department is well aware of these pending discovery issues. See Affidavit of Mark Kubinski, filed in support of the State's Objection to the Motion to Compel. Mr. Kubinski is a deputy attorney general alongside Mr. Jorgensen who is

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<sup>2</sup> Note that in paragraph 3 of his Affidavit, Mr. Jorgensen has no trouble getting information he seeks from "an employee of the Dept. of Correction" when it appears to suit the purposes of counsel and the Dept. of Correction.



"assigned" to represent IDOC. The idea that Mr. Jorgensen is not capable of communicating with his colleague in the Office of the Attorney General about pending discovery lacks merit. Even worse is the admission in Mr. Jorgensen's affidavit that he *did not even request permission to talk to IDOC employees*. That, of course, conveniently leaves his ethical objections to answering discovery neatly in place.

Second, Mr. Jorgensen can represent the interests of the State of Idaho (here, facing *identical issues* with IDOC), as well as any other deputy attorney general in the Attorney General's office. He has already demonstrated that amply in his Objection to the pending motion to compel. Which deputy represents IDOC is simply a matter of which deputy gets "assigned" to which state agency. Third, there is nothing preventing IDOC's attorneys (in the very same office as Mr. Jorgensen) from assisting Mr. Jorgensen through the discovery process, or coordinating objections to discovery through Mr. Jorgensen, or filing independent motions for protective orders pursuant to I.R.C.P. 26(c). Fourth, the suggestion is made that Mr. Jorgensen was instructed by IDOC counsel not to talk to IDOC employees because of "the potential for litigation arising from the tort claim."<sup>3</sup> First, the potential for litigation, by itself, is no basis to prevent discovery. Second, as pointed out in Charboneau's brief, the opportunity for tort litigation is not only remote; at best it is a long way off. In order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a 42 U.S.C. §1983 plaintiff must prove that the conviction or sentence has been reversed on direct

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<sup>3</sup> This is a curious position. On the one hand, the Attorney General's office, through both Mr. Panther and Mr. Kubinski, appear to recognize the potential for future tort litigation based on current allegations. On the other hand, Mr. Jorgensen asserts he has denied pending Requests for Admission because the Respondent "has no evidence suggesting they are true."

appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus under 28 U.S.C. §2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under §1983. *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364 (1994).<sup>4</sup>

Fifth, as to whether Mr. Jorgensen is in an ethical bind because he has been instructed by his superior not to talk to IDOC employees without permission of their counsel; a) he can certainly ask for permission to talk to IDOC employees, and Mr. Kubinski can grant it, subject to any notice requirements Mr. Kubinski requests, thus removing any ethical binds; or b) the Court has already instructed Mr. Jorgensen, and hereby instructs Mr. Kubinski and Mr. Panther as well, that Mr. Jorgensen is to proceed to conduct his required "reasonable inquiry" and answer pending discovery requests, with or without their permission. Or, if they wish, Deputy Attorneys General Mr. Panther or Mr. Kubinski are welcome to become co-counsel on the case with Mr. Jorgensen, and they can do the investigation necessary to respond to the requested discovery and sign them under oath themselves. Quite frankly, "permission from counsel" is not going to set up some ethical bar to the State of Idaho answering requested discovery or requesting information from IDOC. In addition, the Court has already made clear to Mr. Jorgensen that it does not want to hear that any deputy attorney general has instructed IDOC employees not to cooperate with any pending requests for discovery. In view of

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<sup>4</sup> Presumably, IDOC counsel anticipate making "work product" arguments under I.R.C.P. 26(b)(3) in the sense that they will be preparing for upcoming tort litigation, or, if not, that they are preparing a present defense to this action, and therefore information gleaned from internal investigations by IDOC might remain protected. As noted by the Court above, in view of the nature of the evidence sought, counsel and IDOC employees should carefully consider the ramifications of failing to turn over exculpatory information, which may well in this case include information about efforts to conceal exculpatory information. Work product privilege claims may be hard to come by.

what is sought, there is no purpose in pouring gas on this fire. Nor is the Court going to tolerate unreasonable delays caused by having to “match schedules” of myriad and multiple state attorneys in order to comply with simple discovery requests. The Court expects the discovery process to move forward without unnecessary delay.

Finally, counsel for all sides should take note that all ends of this litigation are being funded at public expense. Counsel should be aware that the Court will have little tolerance for discovery abuses, or unreasonable delays, or obfuscation tactics that in the private sector might provoke monetary or other sanctions, and that there is authority for the proposition that under the right circumstances even publicly employed counsel can be required personally to pay or share in sanctions awarding attorney’s fees or costs.

#### **IV. ORDER**

Following hearing on this Motion to Compel, Mr. Jorgensen, as counsel for the State of Idaho in this post-conviction relief case, and as a Deputy Attorney General of the State of Idaho IS HEREBY ORDERED by this Court to conduct such investigation and/or reasonable inquiry into the matters requested in discovery by Charboneau as may be necessary in order to comply with governing discovery standards and respond to and sign discovery on behalf of the State of Idaho, all as required by I.R.C.P. Pursuant to separate order, these discovery responses are due in approximately forty-five (45) days.

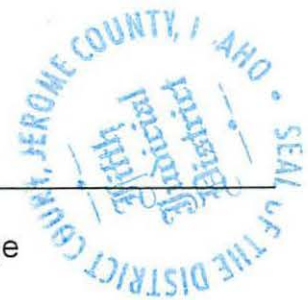
IT IS FURTHER ORDERED, AND THIS DOES SO ORDER, that in the event any agent, attorney, employee, or agency director of the State of Idaho, or any other person responsible to the State of Idaho hereunder, advises Mr. Jorgensen in any fashion

whatsoever that Mr. Jorgensen may not have access to requested discovery or information on any basis whatever, thereby impeding in any fashion Mr. Jorgensen's forthcoming responses to discovery, Mr. Jorgensen is to obtain that person's name, work address, position and title, and include such information in the discovery response along with a statement of what information was requested and what access was refused.

Dated this 1 day of February, 2013.



Robert J. Elgee  
Blaine County District Judge



**I.C.R. RULE 49 (b)**  
**NOTICE OF ORDER**

I, Deputy Clerk for the County of Jerome, do hereby certify that on the 6 day of February, 2013, I have filed the original and caused to be served a true and correct copy of the above and foregoing document:

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720  
Fax: 208.854.8071

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☐ Hand Delivered  
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JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr.  
Suite 240  
Eagle, ID 83616

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BRIAN M. TANNER  
Tanner Law PLLC  
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Twin Falls, ID 83301  
Fax: 208.734.2383

☒ U.S. Mail, Postage Prepaid  
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☐ Telecopy

  
\_\_\_\_\_  
Deputy Clerk

Brian M. Tanner  
Tanner Law, PLLC  
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Telephone: (208) 735-5158  
Facsimile: (208) 734-2383  
[ ISB No. 7450]

*Attorney for the Petitioner*

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 FEB 8 AM 11 08

*Michael Emerson*  
BY   
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

Case No. CV. 2011-638

**NOTICE OF SERVICE**

**NOTICE IS HEREBY GIVEN** That Brian M. Tanner, Attorney of record for the above-named Petitioner, served a true and correct copy of **MOTION TO APPOINT COMPUSEARCH, LLC AS COMPUTER FORENSIC EXPERTS FOR THE COURT**, by fax upon the following attorney at the address below:

DATED this 8th day of February, 2013, to the following:

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
Fax: (208) 854-8071

**JOHN C. LYNN**  
Attorney at Law  
776 E. Riverside Dr.  
Eagle, Idaho 83616  
Fax: (208) 258-8416

Dated this 8th of February, 2013.

TANNER LAW, PLLC.

  
Tirza C. Delgado,  
Legal Assistant

NOTICE OF SERVICE - 1



BRIAN M. TANNER  
Attorney at Law  
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Twin Falls, ID. 83301  
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Idaho State Bar #7450

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Phone: 208.685.2333  
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Email: johnlynn@fiberpipe.net  
ISB #1548

Attorneys for Petitioner

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2013 FEB 8 AM 11 08  
Michelle Emerson  
CLERK  
BY  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMI DEAN CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent.

Case No. CV 11-638

MOTION TO APPOINT COMPUSEARCH,  
LLC AS COMPUTER FORENSIC EXPERTS  
FOR THE COURT

COMES NOW, the Petitioner, by and through counsel, hereby requests that  
CompuSearch be appointed as forensic experts for the Court, as opposed to forensic experts on  
behalf of Petitioner Charboneau.

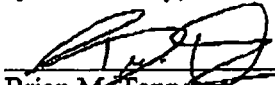
In the Court's previous order, a request was made to determine whether or not  
Compuscarch should be appointed as an expert for the Court, or an expert for Petitioner. The



function of a forensic expert is to discover the truth, irrespective of whether their conclusions favor or disfavor the Petitioner. In addition, the costs to the county are likely to be significantly less if Compusearch is appointed as an expert for the Court as opposed to an expert for counsel of the Petitioner. Further, the Court can more closely control costs if Compusearch is appointed as its expert.

For the following reasons, an order appointing Compusearch as an expert for the Court is requested.

Respectfully Submitted This 8<sup>th</sup> day of February, 2013.

  
\_\_\_\_\_  
Brian M. Tanner  
Attorney for Applicant

COURT MINUTES

CV-2011-0000638

Jaimi Charboneau vs. State of Idaho

Hearing type: Status on Expenses

Hearing date: February 13, 2013

Time: 9:00 am

Judge: Robert J. Elgee

Courtroom: District Courtroom-judicial Bldg

Court reporter: Susan Israel

Minutes Clerk: Andrea Logan

Tape Number: DC

Defense Attorney: John Lynn

Prosecutor: Ken Jorgensen

9.06 Counsel present by phone.

Court introduces the case. The Court sent an email to counsel which has been made a part of the record. The Court received a billing from Mr. Barry who is doing work for Jerome County. The Court questioned the item on bill for reconstructing murder scene. Court doesn't want the County to have to pay for this if the work isn't necessary, also doesn't want Mr. Barry to do the work and not get paid. Court would like a procedure for paying expenses and review issues that need to be resolved.

Mr. Lynn agrees, comments on Mr. Barry's work and billable rate being below any other expert in his field. Mr. Lynn describes the reason why he directed Mr. Barry to review the facts of the murder and the murder scene. He has no objection to bifurcating the trial issues, can have hearing on authenticity of newly discovered evidence and then if needed have a trial if the newly discovered evidence would have had an effect on the murder trial

Mr. Jorgensen has no objection to Mr. Lynn's suggestion to bifurcate these issues, resolve the first issue regarding the claim and then the second issue of prejudice

Mr. Lynn responds, has no objection to Mr. Barry not looking for the Sheriff Office's files now

Court requests Mr. Lynn to contact the Court if and when this issue arises again, for right now the Court will assume Mr. Barry will not be looking for more Sheriff Office files

Court questions counsel if they are stipulating to bifurcating the 2 issues

Mr. Lynn so stipulates

Mr. Jorgensen so stipulates, comments on Brady Claim re: the alleged letter, this should be dealt with during first trial part, the alleged letter was written in 1989 which was after the trial, it wouldn't be trial evidence since the trial was already held

Court disagrees, believes the letter would be dealt with in the second trial

Mr. Jorgensen comments the letter will need to be dealt with either way

Court comments

Mr. Jorgensen clarifies the process, part one trial would be to decide if letter purports to be what Mr. Charboneau claims it to be, a foundational issue and part two will be to establish if it was a Brady violation

Court comments part 1 trial (A) find if letter was false, forged or fictitious, if it is found to be false, forged or fictitious go to (B) find out how letter was found, if it was concealed or conspiracy. If either of these are answered yes then got to part 2 to find out if it was a Brady violation

Mr. Jorgensen has no objection to proceeding in this fashion

Mr. Lynn comments on Brady violation finding after sentencing proceeding, not just trial

Court will prepare the order on this proceeding

Court addresses other issue to address today, the Court will be the "money" judge in this case, describes when Judge Wood appointed this Court to be the "money" judge in State vs. Sarah Johnson since this Court was the presiding judge in Blaine County, counsel can agree to appoint a different judge if needed

Mr. Jorgensen has no objection to this Court dealing with the money in this case as long as there is some submission sent to the State in regards to what is being paid, they do not need to describe what the money is going toward

Court addresses CompuSearch wanting to be the Court's expert in this case, questions if either side can direct them to what needs to be done or just the Court

Mr. Lynn has no objection if they report to the Court and counsel review the report, counsel would not have any input to what the expert reviews besides when and how to meet w/ people

Mr. Jorgensen has no objection either

Court comments if there are questions regarding the scope of the work, the expert should contact both counsel via conference call and request one of them to file a motion before the Court

Mr. Lynn agrees

Mr. Jorgensen has no objection

Court will include this in the order, will also include if expert if impeded by either counsel they are to initiate conference call w/ counsel and a motion filed with the Court

Mr. Lynn questions discovery requests, would like to not have to go before the Court every time they want to serve discovery

Court cannot order discovery without reviewing it first, Mr. Jorgensen can file an objection

Mr. Jorgensen has no objection

9.49 Recess

Filed **FEB 20** 2013  
*Michelle Emerson*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 11-638

AMENDED  
ORDER APPOINTING GLOBAL  
COMPUSEARCH, LLC AS COMPUTER  
FORENSIC EXPERTS FOR THE COURT  
AT COUNTY EXPENSE

The Court entered a previous Order appointing Global CompuSearch LLC as a forensic computer expert in this action. Since that order was entered, counsel for Petitioner have indicated to the Court that they prefer CompuSearch function as the Court's appointed expert rather than as an expert hired by and for Petitioner. The Court held a telephone conference on February 13, 2013, in Blaine County, with Kenneth Jorgensen appearing on behalf of the State of Idaho, and John Lynn appearing for Charboneau. Counsel agreed during this telephone conference that CompuSearch be appointed as the Court's forensics expert and to certain modifications of the conditions of CompuSearch's employment. The Court will therefore clarify CompuSearch's duties in this order.

(1) The Court, having considered Petitioner's Motion for Appointment and having found good cause therein, DOES HEREBY appoint Global CompuSearch, LLC as a

forensic expert employed by the Court to analyze and discover whether emails allegedly sent by employees of the Idaho Dept. of Corrections in approximately 2004, as alleged in Charboneau's Amended Petition, filed October 25, 2011, exist in any form on computers or electronic equipment maintained or previously maintained by the State of Idaho, and/or whether the alleged emails could have or might have been sent, or drafted, or printed on or by any equipment maintained or possessed by the Idaho Department of Corrections or the State of Idaho at the locations where the senders and/or receivers of the alleged emails worked. It is possible that other related emails and/or electronic transmissions relative to the matters alleged in Charboneau's Amended Petition exist in the state's computers or electronic storage, that were received or sent between the same two individuals as appear in the alleged emails, at or near the same time, and CompuSearch should conduct an examination reasonable in scope to determine whether any verifiable electronic data exists that would corroborate the existence and/or authenticity of the emails alleged, or which cast doubt upon their authenticity. CompuSearch should also include in its subsequent report to the Court whether it finds that any of the state's equipment that has been reviewed shows any evidence of tampering.

(2) Global CompuSearch, LLC will be compensated as follows:

- a) Consulting/Computer Forensics: \$150.00 per hour for case review with written analysis and/or \$1,500 per day for hearings, pre-trial consulting or trial plus expenses.
- b) Mobile Media Forensics: \$150.00 per hour for case review with written analysis and/or \$1,500 per day for hearings, pre-trial consulting, trials plus expenses.

c) Various Expenses: Government based per diem rates for any hotels or airfare or rental car charges that may be required.

(3) Global CompuSearch, LLC should submit periodic interim requests for payment to the Court, through the Jerome County Clerk of Court, not less than once every sixty (60) days. Experts must understand that due to a change in the nature of their employment they owe duties as forensic examiners to the Court only, and not to counsel for either side. Counsel may no longer direct and control the activities of CompuSearch. It remains true that counsel are not agents for the Court or the County that is paying expert's fees or expenses, and counsel have no authority to approve expenditures or bind the Court or the County to make payment. Payment to experts must be approved by the Court. Therefore, before experts do work or incur expenses that may be questionable, they may wish to seek authorization from the Court in advance, or to determine whether the Court will impose spending limits on particular activity. These motions, if necessary, shall be made in the manner set forth below.

(4) In the event CompuSearch determines that it needs special authorization for spending from the Court before embarking into certain activity, or in the event CompuSearch feels it needs to widen its search, or needs a motion filed directing or enforcing production or preservation of evidence, or issuance of a subpoena (duces tecum or otherwise) for the production of evidence, Compusearch is directed to contact counsel for both sides by telephone conference call, which may be recorded by any party to the call, and request counsel for either side to prepare an appropriate motion to the Court requesting specified relief on behalf of CompuSearch. Other than as specified, CompuSearch is to have no ex-parte or other communication with the Court



or counsel for either side. Counsel may communicate with the Court, by motion or other approved practice, if they wish for any reason to have the scope and direction of CompuSearch's activities limited or expanded. For good cause shown, the Court may modify these or any other provisions of this order.

(5) CompuSearch is directed to prepare a written report to the Court when its activities have concluded, detailing its findings. This document will be filed with the Clerk of the Court in Jerome County, under seal, and the Clerk of the Court is directed to notify both parties only that the report has been filed. No copies are to be made, and the report is not to be read, nor its contents distributed or disclosed to any person, including counsel, until expressly authorized by the Court. CompuSearch is directed not to disclose the contents of its report to either counsel. The Court will not read or review the report unless by stipulation, or until it is admitted into evidence and/or becomes necessary in the course of other proceedings. Either party may call the necessary representative of CompuSearch to testify and/or for cross-examination at any trial or hearing.

IT IS SO ORDERED.

DATED this 14 day of February, 2013.

  
Honorable Judge Robert Elgee



**I.C.R. RULE 49 (b)**  
**NOTICE OF ORDER**

I, Deputy Clerk for the County of Jerome, do hereby certify that on the 21 day of February, 2013, I have filed the original and caused to be served a true and correct copy of the above and foregoing document:

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720 -0000  
Fax: 208.854.8071

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Fax

JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr., Suite 240  
Eagle, ID 83616  
Fax: 208.685.2355

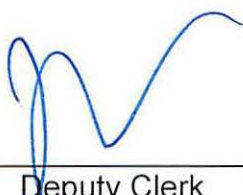
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BRIAN M. TANNER  
Tanner Law PLLC  
137 Gooding St. West  
Twin Falls, ID 83301  
Fax: 208.734.2383

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☐ Overnight Mail  
☐ Fax

Josiah Roloff  
Global CompuSearch LLC  
225 W. Main Ave, Suite 100  
Spokane, Wa 99201  
Fax: 509.532.8600

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Fax



Deputy Clerk

Filed **FEB 20 2013**

CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIME CHARBONEAU

Petitioner,

v.

STATE OF IDAHO

Respondent,

Case No. CV 2011-638

---

PRE-TRIAL ORDER

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The Court held a telephone conference in Blaine County with counsel on February 13, 2013, Kenneth Jorgensen, Deputy Attorney General appearing for and on behalf of the State of Idaho, and John Lynn, Eagle, appearing for and on behalf of Charboneau.

**(1) Money Judge.** The Court and counsel discussed the possibility of appointing a "money judge" to oversee expenditures of county funds, and determined that there was no need for one at the present time. The Court invited either party to file a motion requesting such an appointment at any time in the event they deem it necessary. Counsel for Charboneau will continue to send their monthly billings to the Court, through the Jerome County Clerk, *ex-parte*, and the Court will review them and approve them as necessary.



**(2) Bifurcation of proceedings.** The Court and counsel agreed on a procedure to bifurcate proceedings in order to avoid incurring current expense for matters that may never be in issue. Therefore, unless and until it becomes necessary, Investigator Tom Berry will cease efforts to locate the originals or other copies of files of various law enforcement agencies. Based on a stipulation of counsel reached on the record during telephone conference,

IT IS HEREBY ORDERED, AND THIS DOES ORDER that proceedings in this matter will be bifurcated as follows:

**Issue I.** The first issue for determination will be the question of authenticity of the Tira Arbaugh letter. That is, a determination must be made whether the letter is true and genuine as opposed to false, forged or fictitious. At the same time, the Court will make a determination whether the state or state agents played a role in its concealment, or whether it has in fact been concealed or withheld.<sup>1</sup>

**Issue II.** Depending on the outcome of those initial determinations, the parties will proceed to the second issue for determination, which will be whether the facts established, if any, entitle Charboneau to relief. Part II would include issues as to whether the Tira Arbaugh letter is or would be admissible into evidence, assuming it is true and genuine, and/or whether it is material, among other things.

IT IS SO ORDERED.

DATED this 14 day of February, 2013.

  
Honorable Judge Robert Elgee



<sup>1</sup> These first two determinations (genuineness of the letter and any role of the state) do not necessarily have to be made at exactly the same time. The Court is only setting the order in which matters will proceed.

**I.C.R. RULE 49 (b)**  
**NOTICE OF ORDER**

I, Deputy Clerk for the County of Jerome, do hereby certify that on the 24 day of February, 2013, I have filed the original and caused to be served a true and correct copy of the above and foregoing document:

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Fax: 208.854.8071

☒ U.S. Mail, Postage Prepaid  
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JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr., Suite 240  
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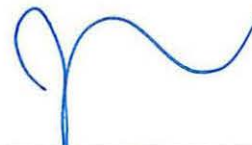
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John L. Horgan  
Jerome County Prosecutor  
233 W. Main  
Jerome, ID 83338  
Fax: 208.644.2639

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☒ Hand Delivered  
☐ Overnight Mail  
☐ Fax



Deputy Clerk

2013 MAR 15 PM 1 01

Michelle Emerson

CLERK

BY

DEPUTY CLERK

**LAWRENCE G. WASDEN**

Idaho Attorney General

**PAUL R. PANTHER**Chief, Deputy Attorney General  
Criminal Law Division**KENNETH K. JORGENSEN ISB#4051**Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

Case No. CV-2011-638

**MOTION TO STAY COMPUTER  
FORENSIC INVESTIGATION**

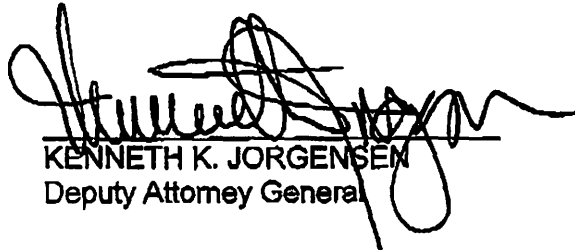
**COMES NOW**, Kenneth K. Jorgensen, Deputy Attorney General and Special Prosecuting Attorney for Jerome County and files this Motion to Stay Computer Forensic Investigation. The basis of this request is that the state, contemporaneous with this motion, has filed a Motion To Reconsider Appointment of Computer Forensic Expert, which should be ruled upon before the computer forensic investigation begins.

In addition, based upon further investigation into Charboneau's claims, the state intends to file a renewed motion for summary disposition no later than

MOTION TO STAY COMPUTER FORENSIC INVESTIGATION - 1

March 29, 2013. Summary disposition would render further discovery unnecessary. Accordingly, a stay of the computer forensic investigation is appropriate pending the Court's decision on the state's forthcoming renewed motion for summary disposition.

DATED this 15<sup>th</sup> day of March 2013.

  
KENNETH K. JORGENSEN  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of March 2013, I caused to be served a true and correct copy of the foregoing Motion to Reconsider Appointment of Forensic Computer Expert to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

  
Patricia Miller, Legal Secretary

MOTION TO STAY COMPUTER FORENSIC INVESTIGATION - 2



**LAWRENCE G. WARDEN**  
Idaho Attorney General

**PAUL R. PANTHER**  
Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**  
Deputy Attorney General  
Special Prosecuting Attorney  
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DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 MAR 15 PM 1 04

*Michelle Emersor*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                        |   |                          |
|------------------------|---|--------------------------|
| JAMIE DEAN CHARBONEAU, | ) |                          |
|                        | ) |                          |
| Petitioner,            | ) | Case No. CV-2011-638     |
|                        | ) |                          |
| vs.                    | ) | AFFIDAVIT OF SCOTT BIRCH |
|                        | ) |                          |
| THE STATE OF IDAHO,    | ) |                          |
|                        | ) |                          |
| Respondent.            | ) |                          |

STATE OF IDAHO )  
 ) ss.  
County of Ada )

I, Scott Birch, being first duly sworn upon his oath, deposes and says:

1. I am the Chief Investigator employed by the Idaho Office of the Attorney General and have been involved in the investigation of issues related to the post conviction case, Jaimi Dean Charboneau v. State of Idaho, Jerome County Case No. CV 2011-638.

AFFIDAVIT OF SCOTT BIRCH, Page 1

2. As part of my investigation I have interviewed a number of individuals including Arvel DeWayne Shedd, William Unger, Marc Haws, and ICI-O Warden Terema Carlin.

3. Mr. Shedd indicated he has been a paralegal with the Idaho Department of Correction ("IDOC") since 1995. Mr. Shedd began his career with IDOC at ISCI and worked there until he was transferred to ICI-O, where he worked until May 2007, when he transferred to IMSI where he still works.

4. Mr. Shedd stated he became acquainted with Charboneau in 1997 when Mr. Shedd was the paralegal at ICI-O.

5. Mr. Shedd was shown the emails Charboneau submitted as Exhibit A to his Amended Petition for Post-Conviction Relief and stated it was not his email. Mr. Shedd explained that although he did not want to use his first name, Arvel, on his email, when the email system was established, they used his first and last name, Arvel Shedd, not his first initial and middle name, as reflected in the emails Charboneau submitted, which also spell Mr. Shedd's middle name (DeWayne) incorrectly as "Dewyne." Mr. Shedd further indicated:

- a. He has never seen IDOC email addresses that include the employee's rank like those that Charboneau has submitted, which identify Mr. Shedd as "Shedd, A. Dewyne/paralegal" and Mr. Unger as "Unger, William/LT.";
- b. IDOC emails never used the slashes like those submitted by Charboneau; and

c. His normal working hours are about 7:00 a.m. to 3:30 or 4:00 p.m. and he does not work on weekends – November 14, 2004, the date Mr. Shedd supposedly wrote one of the emails was a Sunday.

6. I also interviewed William Unger who was formerly a Lieutenant at ICI-O.

7. Mr. Unger denied the content of the emails Charboneau submitted and noted:

a. He did not supervise Mr. Shedd and does not believe Mr. Shedd worked on the weekends;

b. He did not know Marc Haws and has never talked to Mr. Haws;

c. He does not believe he has ever signed an email, "Lt. Unger"; and

d. He does not recall ever seeing an IDOC email format using his title, "Lt." as is done in the emails Charboneau submitted.

8. I also interviewed Marc Haws.

9. Mr. Haws reported he was the Chief of the Criminal Law Division of the Idaho Attorney General's Office from 1983 to 1987, during which time he prosecuted Charboneau as a special prosecutor for Jerome County. Mr. Haws is currently an Assistant United States Attorney for the District of Idaho.

10. Mr. Haws denied he ever conspired with Mr. Unger or Mr. Shedd and noted he has had no involvement in Charboneau's case since 1987.

11. I also interviewed Terema Carlin, Warden of ICI-O. Ms. Carlin provided me with copies of ICI-O emails from November and December 2004, showing the email format used at that time. Those emails are attached hereto as Appendix A, although the majority of the content of the emails has been redacted.

12. I also interviewed Elizabeth Graham.

**AFFIDAVIT OF SCOTT BIRCH, Page 3**

13. Ms. Graham is an IT Systems Technician who began her employment with IDOC in 2000.

14. Ms. Graham reported that she worked as an IT Support Technician in 2004.

15. Ms. Graham reviewed the emails Charboneau submitted as Exhibit A and stated she did not believe the emails were authentic because (a) the "From, To, Date, Subject" section of the email contain the title of the individuals, which is not an automatic setting on the system, and the normal format only provides the name; (b) the header of the documents should be consistent because the text is automatically inserted; and (c) the date is automatically inserted by the email software and is not subject to human error such as changing from 2004 to 204.

16. I also interviewed James Crouch.

17. Mr. Crouch is a retired IT manager from the north Idaho offices of IDOC in Cottonwood, Orofino, and Lewiston, Idaho.

18. Mr. Crouch stated he worked as the IT manager for IDOC in north Idaho for 14.5 years, beginning in 1998, and was the sole IT support for IDOC in the Orofino-Lewiston, Idaho area.

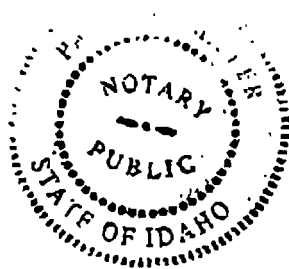
19. Mr. Crouch reviewed the emails Charboneau submitted as Exhibit A to his Amended Petition and stated the emails did not reflect the correct format.

Further your Affiant sayeth naught.



SCOTT BIRCH

Subscribed and sworn to before me this 15<sup>th</sup> day of March 2013.



Notary Public

Residing in Ada Co, Idaho

My Commission Expires on 2/23/16

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_ day of March 2013, I caused to be served a true and correct copy of the foregoing Response to Petitioner's First Set of Interrogatories to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

Patricia Miller  
Patricia Miller, Legal Secretary

# APPENDIX A



Lawanda Thomason - crono entry

Page 1

From: Alice Lahaie  
To: Jones, Larry  
Date: 12/1/04 9:45PM  
Subject: crono entry

Larry,

Tonight we talked about [REDACTED]

[REDACTED] This was  
the time [REDACTED]I suggested to you that you  
the work

crew and when [REDACTED]

I want you to know that I think you are doing a great job [REDACTED]

Lawanda,  
[REDACTED]Have a nice day,  
Sgt. Lahaie


CC: Barnes, Floyd; Carroll, John; Gunn, Benjamin; Hasenpehl, Dwaine; Kempf, Kevin;  
Maceachern, Eric; Roane, Shirley; Shriver, Ken; Thomason, Lawanda; Townsend, Luella; Welch,  
Frank

Charboneau  
113  
2012-008

Lawanda Thomason - Fwd: Sweat lodge fence-main site

Page 1

From: Kevin Kempf  
To: Jones, Larry  
Date: 11/2/04 8:31AM  
Subject: Fwd: Sweat lodge fence-main site



Warden Kempf

CC: Thomason, Lawanda

Charboneau  
114  
2012-006

**LAWRENCE G. WASDEN**  
Idaho Attorney General

**PAUL R. PANTHER**  
Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**  
Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 MAR 15 PM 1 04

*Michelle Emersor*

CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

Case No. CV-2011-638

MOTION TO RECONSIDER  
APPOINTMENT OF COMPUTER  
FORENSIC EXPERT

**COMES NOW**, Kenneth K. Jorgensen, Deputy Attorney General and  
Special Prosecuting Attorney for Jerome County and files this Motion to  
Reconsider Appointment of Computer Forensic Expert.

Charboneau's Amended Petition for Post-Conviction Relief ("Amended  
Petition"), filed October 25, 2011, is premised upon several items of allegedly  
"newly-discovered evidence," including "an electronic message exchange in  
November of 2004 by and between correctional personnel Dewayne [sic] Shedd

MOTION TO RECONSIDER APPOINTMENT OF COMPUTER FORENSIC  
EXPERT - 1

(paralegal) and Lt. William Unger (officer)," which he attached to his Amended Petition as Exhibit A. Charboneau asserts:

These electronic exchanges reveal and describe a preexisting conspiracy by the above-named correctional officers and Marc Haws to illegally intercept, seize and confiscate Petitioner's mail, and referred to therein as the "Charboneau mission". This conspiracy included a fabrication of a log sheet to falsely reflect that Petitioner had signed for and received the packet documents.

(Amended Petition, p.3 (footnote omitted).)

In relation to this "evidence," the Court has appointed Global Compusearch LLC "as a forensic computer expert in this action." (Amended Order Appointing Global Compusearch, LLC as Computer Forensic Experts for the Court at County Expense ("Order"), filed February 20, 2013.) The Court's Order provides that CompuSearch shall be

employed by the Court to analyze and discover whether emails allegedly sent by employees of the Idaho Dept. of Corrections in approximately 2004, as alleged in Charboneau's Amended Petition . . . exist in any form on computers or electronic equipment maintained or previously maintained by the State of Idaho, and/or whether the alleged emails could have or might have been sent, or drafted, or printed on or by any equipment maintained or possessed by the Idaho Department of Corrections or the State of Idaho at the locations where the senders and/or receivers of the alleged emails worked. . . . Compusearch should conduct an examination reasonable in scope to determine whether any verifiable electronic data exists that would corroborate the existence and/or authenticity of the emails alleged, or which cast doubt upon their authenticity.

(Order, p.2.)

The Court has authorized payment in the sum of "\$150.00 per hour for case review with written analysis and/or \$1,500 per day for hearings, pre-trial consulting or trial plus expenses" to Global CompuSearch, LLC. (Order, p.2.)

MOTION TO RECONSIDER APPOINTMENT OF COMPUTER FORENSIC EXPERT - 2

Global CompuSearch has submitted a document, attached hereto as Appendix A, requesting approval for "[e]stimated total billable hours between 16 and 32, not including travel time" for "[c]omputer forensic hours approved for both employees for identification, preservation and collection of data." (Appendix A.) Global CompuSearch's request further states: "Once the data has been preserved, we would then bring the data back to our facility for further view. At which point we will have a better idea of the hours needed for the review stages of our E-Discovery process." (Appendix A.) Thus, the projected 16-32 hours is solely for "preserv[ation] and collect[ion]" and does not include travel time or any actual analysis of the information collected. (Appendix A.)

The state respectfully requests this Court reconsider the appointment of a computer forensic expert for the purpose of determining the authenticity of emails that are fraudulent on their face. Such an investigation is not only a waste of taxpayer money, it is unsupported by the relevant legal standards for discovery and the appointment of experts in a post-conviction case.

"A request under I.C. § 19-4904 for funds to retain an expert may be viewed as analogous to a request for discovery in a post-conviction action." Murphy v. State, 143 Idaho 139, 148, 139 P.3d 741, 750 (Ct. App. 2006). "The district court is not required to order discovery 'unless necessary to protect an applicant's substantial rights.'" Id. (quoting Griffith v. State, 121 Idaho 371, 375, 825 P.2d 94, 98 (Ct. App. 1992)). "'Fishing expedition' discovery should not be allowed." Murphy, 143 Idaho at 148, 139 P.3d at 750. A trial court does not abuse its discretion by denying discovery "where the applicant fails to show any

MOTION TO RECONSIDER APPOINTMENT OF COMPUTER FORENSIC  
EXPERT - 3

probability that further scientific examination or independent testing would yield exculpatory evidence.” Id. (citing Raudebaugh v. State, 135 Idaho 602, 605, 21 P.3d 924, 927 (2001)). “Thus, if the petitioner shows no basis to believe that discovery is necessary to protect [his] substantial rights, the district court is not required to order discovery.” Id.

Charboneau has failed to show any basis for believing that a computer forensic examination of IDOC computers is necessary to protect his substantial rights because there is no basis to believe the alleged emails he has offered in support of his request for such an examination are what they purport to be. Scott Birch, lead Investigator with the Idaho Attorney General’s Office who has been assigned to investigate Charboneau’s claims has, as part of that investigation, interviewed Arvel DeWayne Shedd and William Unger who are the authors of the alleged emails. (Affidavit of Scott Birch (“Birch Aff.”), filed contemporaneously herewith.) Both Mr. Shedd and Mr. Unger deny the emails are legitimate. (Birch Aff.) Not only did Mr. Shedd and Mr. Unger deny the content of the emails, they provided information demonstrating the emails are fraudulent. For example, Mr. Shedd noted:

- Although he did not want to use his first name, Arvel, on his email, when the email system was established, they used his first and last name, Arvel Shedd, not his first initial and middle name as reflected in the emails Charboneau submitted, which also spell DeWayne’s middle name incorrectly as “Dewyne”;

MOTION TO RECONSIDER APPOINTMENT OF COMPUTER FORENSIC  
EXPERT - 4

- He has never seen IDOC email address that includes the employee's rank like those that Charboneau has submitted, which identify Mr. Shedd as "Shedd, A. Dewyne/paralegal" and Mr. Unger as "Unger, William/LT.";
- IDOC emails never used the slashes like those submitted by Charboneau; and
- His normal working hours are about 7:00 a.m. to 3:30 or 4:00 p.m. and he does not work on weekends – November 14, 2004, the date Mr. Shedd supposedly wrote one of the emails was a Sunday.

(Birch Aff.)

Mr. Unger noted:

- He did not supervise Mr. Shedd and does not believe Mr. Shedd worked on the weekends;
- He did not know Marc Haws and has never talked to Mr. Haws;
- He does not believe he has ever signed an email, "Lt. Unger"; and
- He does not recall ever seeing an IDOC email format using his title, "Lt." as is done in the emails Charboneau submitted.

(Birch Aff.)

Mr. Haws, who prosecuted Charboneau and is currently an Assistant United States Attorney for the District of Idaho, also denied he ever conspired with Mr. Unger or Mr. Shedd and noted he has had no involvement in Charboneau's case since 1987, seventeen years before the emails were purportedly written. (Birch Aff.)

**MOTION TO RECONSIDER APPOINTMENT OF COMPUTER FORENSIC  
EXPERT - 5**



Terema Carlin, Warden of ICI-O also provided historical emails to Mr. Birch reflecting the email format used in 2004, which is clearly different than the format used in the fraudulent emails submitted by Charboneau. (Birch Aff.)

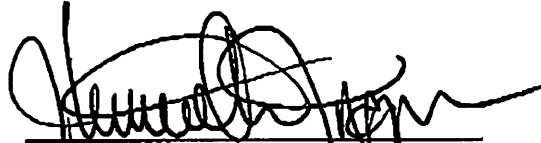
In addition to the information provided by Mr. Shedd, Mr. Unger, Mr. Haws, and Ms. Carlin, the Court can look at the emails and easily conclude the veracity of Mr. Shedd's, Mr. Unger's, Mr. Haws', and Ms. Carlin's statements by referring to (1) the inconsistencies in the dates on the header of both emails – the header on the email purportedly written by Mr. Shedd on 11/14/2004, shows the date without parentheses, *i.e.*, 11/14/2004, while the email purportedly written by Mr. Shedd on 11/15/2004, shows the date with parentheses, *i.e.*, (11/15/2004); and (2) the body of the 11/15/2004 email contains a purported email from Mr. Unger where the date stamp reads, "11/14/204" – it is preposterous to believe either that Mr. Unger sent an email in the year 204 before computers existed and before Mr. Unger was alive or that the computer put an erroneous date stamp on the email. In fact, Elizabeth Graham, who is an IT Systems Technician with IDOC and who worked as an IT Support Technician in 2004 told Investigator Birch that the date is automatically inserted by the email software and is not subject to human error. (Birch Aff.) Ms. Graham also advised that the date in the header of the email should be consistent because the text is automatically inserted. (Birch Aff.) James Crouch, a retired IT manager from ICI-O confirmed that the format of the emails Charboneau submitted was not correct. (Birch Aff.)

Because the emails Charboneau has submitted as Exhibit A to his Amended Petition are clearly fraudulent, a forensic examination of IDOC

MOTION TO RECONSIDER APPOINTMENT OF COMPUTER FORENSIC  
EXPERT - 6

computers for the purpose of determining the authenticity of such emails is unwarranted and a waste of taxpayer money. The state, therefore, respectfully requests this Court reconsider the appointment of CompuSearch, LLC.

DATED this 5 day of March 2013.

  
KENNETH K. JORGENSEN  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_ day of March 2013, I caused to be served a true and correct copy of the foregoing Motion to Reconsider Appointment of Forensic Computer Expert to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

  
Patricia Miller, Legal Secretary

MOTION TO RECONSIDER APPOINTMENT OF COMPUTER FORENSIC  
EXPERT - 7

# APPENDIX A



GLOBAL COMPUSEARCH, LLC  
*E-Discovery & Digital Forensics*

509.443.9293  
225 W. Main Street, STE. 100  
Spokane, WA 99201  
info@gcsforensics.com

Palm Springs, CA 760.459.2122 | Sacramento, CA 916.760.7362 | Portland, OR 503.542.7448

I, Brandon Jelinek, as the "E-Discovery Project Lead" assigned to the case "JAIME CHARBONEAU VS STATE OF IDAHO Case No. CV 11-638", after having spoken with both parties regarding identification, preservation and collection of relevant ESI, requests of the court approval for the following expenses.

1. Travel to and from the physical location where the email servers and file servers for Department of Corrections reside and to the physical location where devices that Mr. Shedd or Mr. Unger have used since 2004 for two employees of Global Compusearch.
2. Possible over-night accommodations for no more than 3 nights for each of our employees.
3. Computer forensics hours approved for both employees for identification, preservation and collection of data. Estimated total billable hours between 16 and 32, not including travel time.

The reason for the expense is to preserve and collect data from the servers, backup media and devices Mr. Shedd and Mr. Unger have utilized since 2004 by way of physical duplication. Once the data has been preserved, we would then bring the data back to our facility for further review. At which point we will have a better idea of the hours needed for the review stages of our E-Discovery process.

I request that counsel draft motions to grant us access to the facilities and to these devices in order to preserve the ESI contained on them. I also request that technical staff be available to answer questions and assist with physically locating devices related to this matter. In addition, I request that access to any online backup accounts be provided to Global Compusearch and that the company containing such backups be issued a motion to compel them to discuss their system and retention policies for data created by the State of Idaho department of corrections.

X

Brandon Jelinek  
E-Discovery Director

**LAWRENCE G. WASDEN**

Idaho Attorney General

**PAUL R. PANTHER**Chief, Deputy Attorney General  
Criminal Law Division**KENNETH K. JORGENSEN ISB#4051**Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 MAR 15 PM 1 04

*Michelle Emersor*

CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

Case No. CV-2011-638

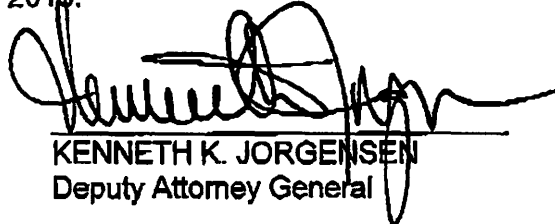
MOTION TO SHORTEN TIME

**COMES NOW**, Kenneth K. Jorgensen, Deputy Attorney General and Special Prosecuting Attorney for Jerome County and moves this Court for an order shortening the time to hear the state's Motion to Stay Computer Forensic Investigation ("Motion to Stay"), filed contemporaneously herewith. Although I.R.C.P. 7(b)(3) provides for 14 days notice before a hearing is held on a motion, an order shortening time is appropriate in this case in light of the nature of the state's Motion to Stay, which seeks to prevent Global CompuSearch from commencing its forensic examination of IDOC computers, because Global

MOTION TO SHORTEN TIME - 1

CompuSearch wishes to begin the examination process by arranging to collect and preserve data from IDOC servers next week. The state, therefore, asks this Court to hear the state's Motion to Stay as soon as a hearing on said motion can be scheduled.

DATED this 15<sup>th</sup> day of March 2013.

  
KENNETH K. JORGENSEN  
Deputy Attorney General

**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that on this 15<sup>th</sup> day of March 2013, I caused to be served a true and correct copy of the foregoing Motion to Reconsider Appointment of Forensic Computer Expert to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☐ U.S. Mail postage prepaid  
☐ Hand Delivery  
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John C. Lynn  
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776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355

☐ U.S. Mail postage prepaid  
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☒ Facsimile

  
Patricia Miller, Legal Secretary

MOTION TO SHORTEN TIME - 2

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
ISB #4051  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2013 MAR 15 PM 4 17

*Michelle Emerson*

CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU,

Plaintiff,

vs.

STATE OF IDAHO,

Defendant.

CASE NO. CV-2011-638

NOTICE OF TELEPHONIC HEARING

COMES NOW, Kenneth K. Jorgensen, Deputy Attorney General and provides notice that a telephonic hearing will be held regarding a Motion for Temporary Stay. The telephonic hearing will be held before the Honorable Robert J. Elgee on the 18th day of March 2013, at 3:30 p.m. Mountain Time.

The telephone conference will be initiated by Kenneth K. Jorgensen. First, Brian M. Tanner will be called at 208-735-5158 and then John C. Lynn will be called at a number which he will provide. With three parties on the line, Honorable Robert J. Elgee will be called at 208-788-5537.



Mr. Tanner and Mr. Lynn have been informed of the procedures relating to the telephonic hearing.

DATED this 15th day of March 2013.



KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March, 2013, I caused to be served a true and correct copy of the foregoing Notice of Telephonic Hearing by facsimile to:

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding Street West  
Twin Falls, ID 83301  
Fax 208-734-2383

and

John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616  
Fax 208-685-2355



Patricia Miller, Legal Secretary

COURT MINUTES

CV-2011-0000638

Jaimi Charboneau vs. State of Idaho

Hearing type: Motion

Hearing date: 3/18/2013

Time: 3:30 p.m.

Judge: Robert J. Elgee

Courtroom: District Courtroom-judicial Bldg

Court reporter: Susan Israel

Minutes Clerk: Crystal Rigby

Tape Number: DC

Defense Attorney: John Lynn, Brian Tanner

Prosecutor: Ken Jorgensen

|      |   |
|------|---|
|      |   |
| 3.31 | Counsel present by phone.   |
|      | Court introduces the case.  |
| 3.32 | Mr. Tanner responded and faxed a copy to Blaine on Friday evening.  |
|      | Court has not received that copy.   |
| 3.34 | Mr. Jorgensen addresses the Motion to Stay Computer Forensic Investigation. Concerned that the emails were not genuine.             |
| 3.36 | Mr. Tanner responds, would like the chance to investigate.  |
| 3.38 | Mr. Jorgensen responds, believes "finding out what is going on" is a fishing expedition. Discusses the issues with the emails.      |
| 3.41 | Mr. Tanner responds about the issue with waiting and the possibility of more concealment.   |
|      | Court comments about the open question about the possession of the letter.  |
|      | Mr. Jorgensen comments, there is no evidence the letter was being held by the IDOC.   |
|      | Court continues, the search for the truth is warranted. Denies the motion to stay.  |
| 3.47 | Mr. Lynn comments on the emails, requests the computer investigators focus on any digital documents that are in the State's system. |
|      | Court will need a motion to specify what the computer investigators will be searching.  |
|      | Mr. Tanner responds.  |
|      | Court would need an order.  |
| 3.53 | Mr. Jorgensen responds, has no input as the independent search.   |
|      | Mr. Lynn will prepare a proposed order.   |

|      |   |
|------|---|
|      | Court comments, allows Mr. Lynn to draft a letter allowing the investigators to search for any documents.   |
| 3.58 | Mr. Tanner comments on a motion for the State to not delete anything.   |
|      | Court requests the motion be emailed to his law clerk to be reviewed.   |
|      | Court has no issue with orders preserving evidence.   |
|      | Mr. Tanner comments.  |
|      | Mr. Jorgensen clarifies about emails that were deleted, doesn't want to see this motion prohibit the use of the IDOC's computers. Understands that information relating to this case should not be deleted. |
| 4.03 | Court inquires about the scope of this motion. Will defer ruling until an approved order by Mr. Jorgensen is presented by Mr. Tanner. If needed a hear may be scheduled.                                    |
| 4.06 | Recess  |

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
ISB #4051  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed MAR 22 2013  
*Michelle Emerson*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAMIE DEAN CHARBONEAU,

Plaintiff,

vs.

STATE OF IDAHO,

Defendant.

CASE NO. CV-2011-1638

ORDER ON MOTION TO SHORTEN  
TIME

DEFENDANT having moved to shorten time on its Motion to Stay Computer Forensic Investigation, and good cause therefore having been shown, it is hereby ordered that the Motion shall be brought before the Court on Monday, March 18, 2013 at 3:30 p.m. by telephonic hearing.

DATED this 18 day of March 2013.

*Robert Elgee*  
Honorable Judge Robert Elgee  
~~Deputy Attorney General~~



**I.C.R. RULE 49 (b)**  
**NOTICE OF ORDER**

I, Deputy Clerk for the County of Jerome, do hereby certify that on the 18 day of March, 2013, I have filed the original and caused to be served a true and correct copy of the above and foregoing document:

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720  
Fax: 208.854.8071

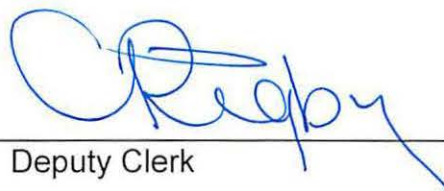
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JOHN C. LYNN  
Attorney at Law  
776 E. Riverside Dr., Suite 240  
Eagle, ID 83616  
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BRIAN M. TANNER  
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137 Gooding St. West  
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\_\_\_\_\_  
Deputy Clerk

**LAWRENCE G. WASDEN**

Idaho Attorney General

**PAUL R. PANTHER**

Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**

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P.O. Box 83720  
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Telephone: (208) 332-3096  
Facsimile: (208) 854-8083

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed MAR 29 2013  
*Michelle Emerson*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV-2011-638

NOTICE OF SERVICE

**NOTICE IS HEREBY GIVEN** that Kenneth K. Jorgensen, Attorney for the Respondent, served a true and correct copy of the **AMENDED RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES** by U.S. Mail Postage Prepaid upon the following attorneys at the addresses below:

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301

John C. Lyon  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616

DATED this 15<sup>th</sup> day of March 2013

*Kenneth K. Jorgensen*  
Kenneth K. Jorgensen  
Deputy Attorney General

**LAWRENCE G. WASDEN**

Idaho Attorney General

**PAUL R. PANTHER**

Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**

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DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed MAR 29 2013

CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
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JAIMI DEAN CHARBONEAU,

Petitioner,

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CASE NO. CV-2011-638

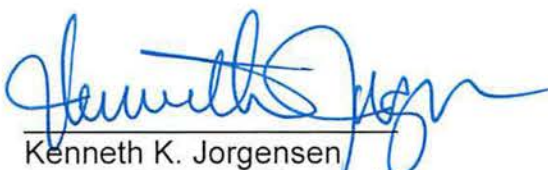
NOTICE OF SERVICE

**NOTICE IS HEREBY GIVEN** that Kenneth K. Jorgensen, Attorney for the Respondent, served a true and correct copy of the **AMENDED RESPONSE TO PETITIONER'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS** by U.S. Mail Postage Prepaid upon the following attorneys at the addresses below:

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301

John C. Lyon  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616

DATED this 15<sup>th</sup> day of March 2013

  
Kenneth K. Jorgensen  
Deputy Attorney General



**LAWRENCE G. WASDEN**

Idaho Attorney General

**PAUL R. PANTHER**

Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**

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DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed MAR 29 2013

CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV-2011-638

NOTICE OF SERVICE

**NOTICE IS HEREBY GIVEN** that Kenneth K. Jorgensen, Attorney for the Respondent, served a true and correct copy of the **AMENDED RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS** by U.S. Mail Postage Prepaid upon the following attorneys at the addresses below:

Brian M. Tanner  
Tanner Law, PLLC  
137 Gooding St. W.  
Twin Falls, ID 83301

John C. Lyon  
776 E. Riverside Dr., Ste. 200  
Eagle, ID 83616

DATED this 15<sup>th</sup> day of March 2013.

  
Kenneth K. Jorgensen  
Deputy Attorney General



ORIGINAL

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN #4051  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed MAR 29 2013

*Michael Emerson*  
CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

THE STATE OF IDAHO,

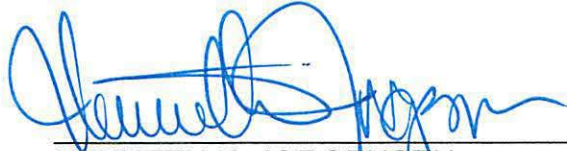
Respondent.

CASE NO. CV-2011-638

SECOND MOTION FOR  
SUMMARY DISMISSAL

**COMES NOW** the State of Idaho and, by and through its Attorney General and undersigned counsel, moves this Court for summary dismissal of the pending Amended Petition for Post-Conviction Relief under Idaho Code section 19-4906(c). The basis for this Motion is set forth in the accompanying Memorandum in Support of Second Motion for Summary Dismissal and Affidavit of Kenneth K. Jorgensen, both filed concurrently herewith.

DATED this 26<sup>th</sup> day of March, 2013.



KENNETH K. JORGENSEN  
Deputy Attorney General

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of March 2013, I caused to be served a true and correct copy of the foregoing Second Motion for Summary Dismissal to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

☒ U.S. Mail postage prepaid  
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John C. Lynn  
Attorney at Law  
776 E. Riverside Dr., Ste. 240  
Eagle, ID 83616  
Fax 208-685-2355

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Rosean Newman, Legal Secretary

**LAWRENCE G. WASDEN**  
Idaho Attorney General

**PAUL R. PANTHER**  
Chief, Deputy Attorney General  
Criminal Law Division

**KENNETH K. JORGENSEN ISB#4051**  
Deputy Attorney General  
Special Prosecuting Attorney  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 332-3096  
Facsimile: (208) 854-8083

**ORIGINAL** DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho  
Filed MAR 29 2013  
Michelle Emerson  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

|                        |   |                         |
|------------------------|---|-------------------------|
| JAMIE DEAN CHARBONEAU, | ) |                         |
|                        | ) |                         |
| Petitioner,            | ) | Case No. CV-2011-638    |
|                        | ) |                         |
| vs.                    | ) | AFFIDAVIT OF KENNETH K. |
|                        | ) | JORGENSEN               |
| THE STATE OF IDAHO,    | ) |                         |
|                        | ) |                         |
| Respondent.            | ) |                         |

STATE OF IDAHO )  
County of Ada ) ss.

I, Kenneth K. Jorgensen, being first duly sworn upon his oath, depose and say:

1. I am the attorney for the respondent, state of Idaho in the post conviction case, Jamie Dean Charboneau v. State of Idaho, CV 2011-638.

2. Attached to this affidavit as Exhibit 1 is a true and correct copy of the transcript of the testimony provided by Tiffnie Arbaugh in the preliminary hearing in the

underlying criminal case. This copy of the testimony was excerpted from a copy of the record of the original criminal appeal obtained from the Idaho Supreme Court.

3. Attached to this affidavit as Exhibit 2 is a true and correct copy of the transcript of the testimony provided by Tira Arbaugh in the preliminary hearing in the underlying criminal case. This copy of the testimony was excerpted from a copy of the record of the original criminal appeal obtained from the Idaho Supreme Court.

4. Attached to this affidavit as Exhibit 3 is a true and correct copy of the transcript of the testimony provided by Tiffnie Arbaugh in the state's case-in-chief during the trial in the underlying criminal case. This copy of the testimony was excerpted from a copy of the record of the original criminal appeal obtained from the Idaho Supreme Court.

5. Attached to this affidavit as Exhibit 4 is a true and correct copy of the transcript of the testimony provided by Tira Arbaugh in the trial in the underlying criminal case. This copy of the testimony was excerpted from a copy of the record of the original criminal appeal obtained from the Idaho Supreme Court.

6. Attached to this affidavit as Exhibit 5 is a true and correct copy of the transcript of the testimony provided by Tiffnie Arbaugh in the defense case during the trial in the underlying criminal case. This copy of the testimony was excerpted from a copy of the record of the original criminal appeal obtained from the Idaho Supreme Court.

7. Attached to this affidavit as Exhibit 6 is a true and correct copy of the transcript of the testimony provided by Jaimi Charboneau in support of the defendant's motion to dismiss in the underlying criminal case. This copy of the testimony was excerpted from a copy of the record of the original criminal appeal obtained from the Idaho Supreme Court.

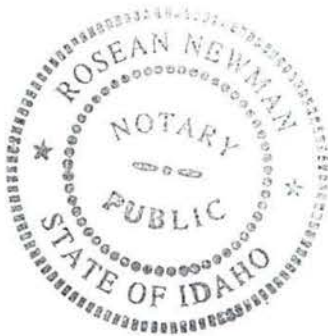


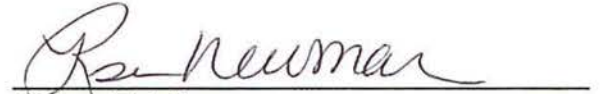
8. Attached to this affidavit as Exhibit 7 is a true and correct copy of the Opinion Dismissing Third Petition for Post Conviction Relief. This copy of the opinion is a copy of a document maintained in the appeal file at the Office of the Attorney General.

Further your Affiant sayeth naught.

  
KENNETH K. JORGENSEN

Subscribed and sworn to before me this 26 day of March 2013.



  
Notary Public  
Residing in Boise Idaho  
My Commission Expires on 3/10/2017

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26 day of March 2013, I caused to be served a true and correct copy of the foregoing Affidavit of Kenneth K. Jorgensen to:

Brian M. Tanner  
Attorney at Law  
137 Gooding St. W.  
Twin Falls, ID 83301  
Fax 208-734-2383

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\_\_\_\_\_  
Rosean Newman, Legal Secretary



LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN #4051  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
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ORIGINAL

DISTRICT COURT  
FIFTH JUDICIAL DIST  
County of Jerome, State of Idaho

Filed MAR 29 2013

*Michelle Emerson*  
CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF JEROME

JAIMI DEAN CHARBONEAU,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

CASE NO. CV-2011-638

BRIEF IN SUPORT OF SECOND  
MOTION FOR SUMMARY DISMISSAL

STATEMENT OF THE FACTS AND COURSE OF THE PROCEEDINGS

Charboneau was "convicted of the first-degree murder of his former wife, Marilyn Arbaugh ... [and] sentenced to death." State v. Charboneau, 116 Idaho 129, 132, 774 P.2d 299, 302 (1989). Charboneau and Marilyn's divorce was entered June 13, 1984. Id. at 132-33, 774 P.2d at 302-03. On June 22, 1984, Marilyn reported that Charboneau had kidnapped and raped her. Id. at 133, 774 P.2d at 303. On June 28, 1984, Charboneau purchased a .22 rifle. Id.

Some time after 11:00 o'clock [the morning of Sunday, July 1, 1984]  
Marilyn went out to check some horses in a corral near her home. Shortly

after that Marilyn's daughter Tiffnie heard shots outside, grabbed Marilyn's .22 pistol, and went to see what had happened. She found her mother sitting on the ground in the barn with blood on her. [Charboneau] was standing close to Marilyn with a .22 caliber rifle pointed at Marilyn. Tiffnie asked [Charboneau] to leave and told him she was going to call the police. [Charboneau] told Tiffnie that he would take Marilyn to the doctor. Both Marilyn and [Charboneau] told Tiffnie to leave.

At 11:38 that morning Tiffnie called the Jerome County Sheriff's office and said that [Charboneau] had shot her mother. Tiffnie then told her sister Tira about the shooting and they both got dressed. They heard more shots and ran outside where they hid behind a sheep wagon and called to their mother. Tiffnie had her mother's .22 caliber pistol with her, and it accidentally discharged behind her. She ran into the house, hid the gun, returned to the sheep wagon, and then ran to the barn. Tira followed close behind. Marilyn was lying on her back with her arms over her head. The girls ran back to call an ambulance. At 11:42 a.m. Tira telephoned for assistance and reached the Jerome County Sheriff's office. She told them to get an ambulance and that her mother was dying. When the sheriff's deputies arrived at the scene, they found Marilyn's body in the barn and located [Charboneau] in a field near the barn with a .22 caliber rifle lying nearby. [Charboneau] was arrested and charged with first degree murder. At the time of his arrest, [Charboneau] acknowledged that he had shot Marilyn, although he stated that he did so because she was going to shoot him.

Id.

The initial version of events Charboneau told his attorney was that there had been no rape on June 21, 1984, but that he and Marilyn had reconciled and had consensual sexual intercourse. Id. He purchased the .22 rifle as a gift for Tira and took it to the ranch on June 28, 1984. Id. Marilyn had him stay in the barn because she did not yet wish to break the news of the reconciliation to her daughters. Id. On July 1, 1984, Marilyn took the .22 rifle into the house, removed the scope, returned with it to the barn, and loaded it. Id. According to Charboneau, Marilyn then pointed the rifle at him and pulled the trigger, but the rifle did not fire. Id. at 133-34, 774 P.2d at 303-04. Charboneau stated he then wrestled the gun away from Marilyn and shot her repeatedly

with it, and then fled. Id. at 134, 774 P.2d at 304. In a later version of events he stated he had not immediately fled, but instead watched Tiffnie approach Marilyn after Charboneau shot her, and that Tiffnie then delivered a fatal shot to Marilyn's head. Id. Charboneau testified at a hearing on his motion to dismiss to events more or less consistent with his second statement to his attorney. Id. at 134-35, 774 P.2d at 304-05.

Charboneau was convicted after a jury trial, and sentenced to death. Id. at 132, 774 P.2d at 302. His petition for post-conviction relief was denied. Id. at 136-37, 774 P.2d at 306-07.<sup>1</sup> The Idaho Supreme Court, in an opinion issued May 25, 1989, affirmed Charboneau's conviction and the denial of post-conviction relief, but reversed his sentence and remanded the case for re-sentencing. Id. at 155, 774 P.2d at 325. On remand the state did not seek the death penalty and the district court sentenced Charboneau to fixed life. State v. Charboneau, 124 Idaho 497, 861 P.2d 67 (1993).

"On May 23, 2002, Charboneau filed his third petition seeking post conviction relief." Charboneau v. State, 140 Idaho 789, 791, 102 P.3d 1108, 1110 (2004). The bases for this petition included hearsay statements to Charboneau's mother "that a cache of physical evidence had been removed from the crime scene and hidden, including a second gun recovered at the scene." Id.

Charboneau also stated that the victim's daughter, Tira Arbaugh, who later married Charboneau's younger brother, Jimmy Griggs, had ultimately confessed to Griggs and [Charboneau's mother] that she had been directed by the prosecution to remain silent regarding various things, including the other guns involved in the shooting, and to say that the only gun she could remember seeing that day was the .22 rifle. While Arbaugh was apparently willing to testify to these matters, she recently died from a severe asthma attack.

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<sup>1</sup> Because it was a capital case subject to unitary review, the post-conviction proceedings were completed prior to the initial appeal.

Id. The district court dismissed the claim that exculpatory evidence had been suppressed by the prosecution, supported by the alleged statements of Tira Arbaugh, because it was both untimely and based on inadmissible hearsay evidence. (Opinion Dismissing Third Petition for Post Conviction Relief (CV 2002-1546) (Exhibit 7<sup>2</sup>).) The Idaho Supreme Court upheld the order dismissing the petition on the basis that it was untimely. Charboneau v. State, 144 Idaho 900, 174 P.3d 870 (2007). "Regarding Charboneau's allegations of a second, hidden, undisclosed gun, the district court made a factual finding that at the latest, petitioner was fully aware of this information in April 2001." Id. at 905, 174 P.3d at 875 (internal quotes and brackets omitted). There was also "other evidence making it likely Charboneau had knowledge of the alleged hidden gun as early as 1999." Id.

Charboneau filed the petition initiating the current successive post-conviction action (at least his fifth post-conviction petition) on June 15, 2011. (Petition.) Charboneau alleges he was provided a "packet" of seven documents on March 18, 2011. (Amended Petition, p. 2.) Those documents include copies of documents alleged to be: an e-mail exchange between prison guard William Unger and paralegal DeWayne Shedd (Exhibit A to Amended Petition), a handwritten note by Shedd (Exhibit B), two statements by Larry Gold (Exhibits C & D), a handwritten note (Exhibit E), an envelope (Exhibit F), and a handwritten letter by Tira Arbaugh dated September 6, 1989 (Exhibit G). Charboneau claims that the alleged letter by Tira Arbaugh shows that the prosecution hid exculpatory evidence, and that a widespread conspiracy between the special prosecutor, at least one other deputy attorney general, several prison personnel,

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<sup>2</sup> Numbered exhibits referenced in this brief are the exhibits attached to the Affidavit of Kenneth K. Jorgensen, filed in support of the Second Motion for Summary Dismissal.

and the Jerome County Court Clerk had “deprived Petitioner of relevant and material information pertinent to his underlying conviction, as well as his prior legal and pending legal efforts to gain relief from his underlying conviction.” (Amended Petition, pp. 5-6.) The Amended Petition apparently asserts as its cause of action that the alleged conspiracy effectively prevented Charboneau from asserting timely and meritorious post-conviction and sentencing claims, but does not specifically allege what those claims would have been. (Amended Petition.)

The state has filed a prior motion for summary dismissal, requesting that the petition be dismissed because the alleged letter from Tira Arbaugh is a forgery and hearsay. (1/5/12 Motion for Summary Disposition and brief in support.) This Court denied that motion on March 8, 2012. The state brings this present Motion requesting dismissal on the basis that the petition is (1) barred by the statute of limitation; (2) even if the letter allegedly written by Tira Arbaugh were what it is claimed to be, it does not support any viable claim for relief; and (3) because Charboneau has not supported his Amended Petition with any admissible evidence.

## ARGUMENT

### I.

#### The Claim That The Prosecution Suppressed Exculpatory Evidence Is Still Barred By The Statute Of Limitation

A petition for post-conviction relief must be filed “within one (1) year ... from the determination of an appeal.” I.C. § 19-4902(a). Successive petitions asserting newly discovered claims need not be filed within the one-year limitation period of I.C. § 19-4902(a). Charboneau v. State, 144 Idaho 900, 904, 174 P.3d 870, 874 (2007); Rhoades v. State, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009). Because I.C. § 19-

4908 contemplates successive petitions to assert a claim where that claim “for sufficient reason was not asserted or was inadequately raised,” the statute contemplates that claims *not known* to petitioners would be raised beyond the one-year limitation period. Charboneau, 144 Idaho at 904-05, 174 P.3d at 874-75; Rhoades, 148 Idaho at 250, 220 P.3d at 1069. Claims that “raise important due process issues” that were “not known to the defendant” within the one-year limitation period of I.C. § 19-4902(a) can therefore be brought within a reasonable time of their discovery. Rhoades, 148 Idaho at 250-51, 220 P.3d at 1069-70. “In determining what a reasonable time is for filing a successive petition, we will simply consider it on a case-by-case basis, as has been done in capital cases.” Charboneau, 144 Idaho at 905, 174 P.3d at 875; see also Rhoades, 148 Idaho at 251, 220 P.3d at 1070.

Charboneau’s third petition for post conviction relief included a claim that the prosecution suppressed exculpatory evidence based on what Tira Arbaugh allegedly told Charboneau’s brother and mother before Tira died. Charboneau v. State, 140 Idaho 789, 791, 102 P.3d 1108, 1110 (2004). The instant petition asserts a claim that that the prosecution suppressed a letter Tira Arbaugh allegedly wrote before she died. (Amended Petition.) Even though Charboneau did not know about the alleged letter, he still knew about the underlying Brady claim as early as 1999, and no later than 2001. Charboneau, 144 Idaho at 905, 174 P.3d at 870. The Idaho Supreme Court rejected Charboneau’s argument that the reasonable time to bring his claim should be measured from when he accumulated sufficient evidence to support his claim and held that timeliness is measured “from the date of notice, not from the date a petitioner has a complete cache of evidence.” Id. This holding controls in this case as well:

Charboneau knew about the underlying Brady claim no later than 2001 and therefore it is untimely *regardless of when he allegedly discovered additional evidence to support that claim*. Therefore, the petition is untimely and must be dismissed.

## II.

### The Alleged Letter By Tira Arbaugh Does Not Support Any Claim For Post-Conviction Relief Even If It Were Genuine

#### A. Introduction

Charboneau's claim in this post-conviction action is effectively a renewal of his claim "that a cache of physical evidence had been removed from the crime scene and hidden, including a second gun recovered at the scene." Charboneau, 140 Idaho at 791, 102 P.3d at 1110. Even assuming the truth of his allegations of the post-trial conspiracy, however, and even assuming Exhibit G is a true and accurate copy of a letter Tira Arbaugh in fact wrote in September of 1989,<sup>3</sup> Charboneau has still failed to present even a *prima facie* claim for relief. Specifically, even if Exhibit G is in fact a copy of a letter authored by Tira Arbaugh on the date represented thereon, Charboneau would not be able to prevail on his claim.

#### B. Standard for Summary Dismissal

"A claim for post-conviction relief will be subject to summary dismissal ... if the applicant has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." DeRushe v. State, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009); see also Baxter v. State, 149

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<sup>3</sup> It is the state's position that there is no admissible evidence of the alleged post-trial conspiracy or that Tira Arbaugh in fact wrote Exhibit G. The documents supporting those allegations are obvious forgeries and inadmissible hearsay.



Idaho 859, 862, 243 P.3d 675, 678 (Ct. App. 2010). In post-conviction proceedings, bare or conclusory allegations, unsubstantiated by any admissible evidence, are inadequate to entitle a petitioner to an evidentiary hearing. Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994); Baruth v. Gardner, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct. App. 1986). Where petitioner's affidavits are based upon hearsay rather than personal knowledge, summary disposition without an evidentiary hearing is appropriate. Ivey v. State, 123 Idaho 77, 87-81, 844 P.2d 706, 716-17 (1992). "Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law." Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007). Application of these standards show the state is entitled to summary dismissal because Charboneau's claim that exculpatory evidence was withheld is either inadequate as a matter of law or disproved by the record in the criminal case.

C. The Letter Does Not Establish A *Prima Facie* Claim That The Prosecution Suppressed Exculpatory Evidence

Due process requires the prosecution to disclose to the defense all exculpatory evidence known to the state or in its possession. Brady v. Maryland, 373 U.S. 83 (1963). However, "the Constitution is not violated every time the government fails or chooses not to disclose evidence that might prove helpful to the defense." Kyles v. Whitley, 514 U.S. 419, 436-37 (1995). Rather, "suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Id. at 432 (quoting Brady, 373 U.S. at 87). To prove a Brady violation, a

petitioner must therefore show: (1) that the evidence was exculpatory or impeaching; (2) it should have been but was not produced; and (3) the suppressed evidence was material to his guilt or punishment. Strickler v. Greene, 527 U.S. 263, 281-82 (1999). “[E]vidence is ‘material’ within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” Smith v. Cain, \_\_\_ U.S. \_\_\_, 132 S.Ct. 627, 630 (2012). Charboneau’s claim in this case fails on each element.

To understand why the alleged Tira Arbaugh letter fails to set forth a viable claim that material, exculpatory evidence was suppressed by the prosecution, it is first necessary to understand the evidence presented in the criminal case.

Tiffnie was called as a witness by the state at the preliminary hearing. (Exhibit 1, p. 81, Ls. 1-3.) Tira was called by the defense. (Exhibit 2, p. 282, Ls. 21-23.) Both Tira and Tiffnie testified at the preliminary hearing that on the morning of the murder they were awakened when their mother returned home at around 10:30 or 11:00. (Exhibit 1, p. 87, Ls. 7-21; Exhibit 2, p. 285, L. 5 – p. 287, L. 16.) Their mother had brought them some magazines that they looked at together. (Exhibit 1, p. 88, L. 24 – p. 89, L. 9; Exhibit 2, p. 287, L. 17 – p. 288, L. 2.) Marilyn then took a bath. (Exhibit 1, p. 89, Ls. 10-15; Exhibit 2, p. 288, Ls. 1-16.) After her bath, Marilyn went out to the phone, located in a shop near the house, to call her parents, while Tira got in the bath. (Exhibit 1, p. 89, L. 21 – p. 90, L. 16; Exhibit 2, p. 288, L. 20 – p. 289, L. 7.) Marilyn returned about ten minutes later, asking if the girls had turned the horses out into the corral. (Exhibit 1, p. 89, Ls. 23-24; p. 91, Ls. 6-25; Exhibit 2, p. 289, Ls. 14-23.) She then went

back out to put the horses back. (Exhibit 1, p. 93, Ls. 2-4; Exhibit 2, p. 297, L. 24 – p. 298, L. 4.)

Shortly after Marilyn left the house to move the horses, Tiffnie heard shots and both Tira and Tiffnie heard their mother scream. (Exhibit 1, p. 93, Ls. 5-17, p. 95, Ls. 16-24; Exhibit 2, p. 298, Ls. 5-25.) Tiffnie grabbed her mother's .22 pistol and ran outside to investigate. (Exhibit 1, p. 96, L. 4 – p. 97, L. 8; Exhibit 2, p. 298, L. 17 – p. 299, L. 21.) She found Charboneau with a .22 rifle in his hands, standing over her mother, who was sitting on the ground and bleeding. (Exhibit 1, p. 97, L. 9 – p. 99, L. 19; p. 112, Ls. 22-25.) Charboneau told Tiffnie to leave, and that he would take Marilyn to the doctor. (Exhibit 1, p. 99, Ls. 20-23.) Tiffnie called the police. (Exhibit 1, p. 100, Ls. 22-25.) She then ran to get Tira out of the bath. (Exhibit 1, p. 101, Ls. 8-19; Exhibit 2, p. 299, L. 24 – p. 300, L. 20.) While Tira dressed Tiffnie hid the keys to the pickup in the freezer to make sure Charboneau could not get them and escape. (Exhibit 1, p. 101, L. 16 – p. 102, L. 7.) Moments later, while both girls dressed, they heard more shots. (Exhibit 1, p. 102, L. 16 – p. 103, L. 4; Exhibit 2, p. 302, L. 10 – p. 303, L. 9; p. 327, L. 16 – p. 328, L. 19.)

Both girls went back out, and hid behind a sheep wagon. (Exhibit 1, p. 102, Ls. 5-9; Exhibit 2, p. 300, L. 22 – p. 301, L. 4.) They called out to their mother. (Exhibit 1, p. 103, Ls. 10-23; Exhibit 2, p. 301, Ls. 7-9.) Tiffnie accidentally discharged the .22 pistol, and then took it back inside the house. (Exhibit 1, p. 103, L. 24 – p. 104, L. 6;

Exhibit 2, p. 303, L. 12 – p. 304, L. 12.) The girls went to the barn and found their mother lying there. (Exhibit 1, p. 104, L. 7 – p. 107, L. 20.)<sup>4</sup>

Charboneau later testified to his version of events in support of a motion to dismiss. (Exhibit 6.) He testified he purchased a .22 rifle, two boxes of shells, and some gift wrap to present the rifle to Tira as a gift. (Exhibit 6, p. 137, L. 15 – p. 139, L. 7.) He then went out to the ranch where Marilyn and the girls lived. (Exhibit 6, p. 140, L. 3 – p. 141, L. 7.) He claimed he lived in the tack shed on the property for the next three days, with Marilyn's permission, because Marilyn was waiting for the right time to tell the girls about her and Charboneau's reconciliation. (Exhibit 6, p. 140, L. 24 – p. 151, L. 14.) Charboneau testified that Marilyn made the decision to tell the girls of the reconciliation on Sunday morning and also decided to give Tira the rifle Charboneau purchased. (Exhibit 6, p. 151, L. 12 – p. 152, L. 22.) She took the rifle into the house and returned a few minutes later with the rifle, but without the scope that had been on it. (Exhibit 6, p. 152, L. 23 – p. 153, L. 10.) As Charboneau put on his boots she loaded the rifle. (Exhibit 6, p. 153, Ls. 10-22.)

According to Charboneau, when he asked Marilyn where she had spent the previous night she announced she could not "take it," told him she loved him, but that she could not live with or without him. (Exhibit 6, p. 153, L. 23 – p. 154, L. 13.) She pointed the rifle at him and said, "You're dead. No other woman is going to have you." (Exhibit 6, p. 154, Ls. 14-16.) She pulled the trigger but the gun did not fire. (Exhibit 6, p. 154, Ls. 16-19.)

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<sup>4</sup> Tira and Tiffnie testified at trial consistently with the testimony they gave at the preliminary hearing. (See Exhibits 3-5.)

Charboneau testified that he then wrestled the rifle away from Marilyn while Marilyn screamed at Tiffnie to get "Rufus," her shotgun. (Exhibit 6, p. 154, L. 20 – p. 155, L. 7.) Once he had the .22 rifle, Marilyn ran toward the house. (Exhibit 6, p. 155, Ls. 7-9.) Tiffnie exited the house with the .22 pistol. (Exhibit 6, p. 155, Ls. 9-11.) Charboneau testified that at that point he closed his eyes and the rifle in his hands just "went off ... four or five times." (Exhibit 6, p. 155, Ls. 11-16.)

Charboneau claimed he opened his eyes and saw Marilyn bleeding from her shoulder and leg. (Exhibit 6, p. 155, Ls. 17-25.) He knelt down beside her and she apologized for "all the lies" she had told him. (Exhibit 6, p. 156, Ls. 1-6.) Charboneau testified that at that moment Tiffnie ran at them and shot "two or three times." (Exhibit 6, p. 156, Ls. 7-11.) Assuming she was shooting at him, he fled. (Exhibit 6, p. 156, Ls. 10-19.) He looked back and saw Tiffnie apparently shoot Marilyn in the head. (Exhibit 6, p. 156, L. 20 – p. 157, L. 11.)

Charboneau's post-conviction claims rest primarily on a document he alleges is a copy of a letter written by Tira Arbaugh on September 6, 1989. (Exhibit G.) To put the timing of the alleged letter in context, the trial had ended more than four years previously, the Idaho Supreme Court had affirmed Charboneau's conviction and denial of post-conviction relief more than three months previously, and special prosecutor Marc Haws had not appeared in the case for about three years.

In the alleged letter is the claim that Tira's "statements to the police were not all true." (Exhibit G, pp. 1-2.) The letter states that officer "Driesal" told her to "write down a specific time [that she woke up] which I knew was not true." (Exhibit G, p. 2.) The letter then claims that Tira provided to Officer Driesal a version of events that bears

almost no resemblance to either the version that Tira and Tiffnie testified to or the version that Charboneau claimed under oath. Discrepancies include:

- The alleged letter claims Charboneau was in the home the morning of the murder; Tira, Tiffnie and Charboneau all testified he was not in the home.
- The alleged letter claims Charboneau and Marilyn presented the .22 rifle to Tira as a gift that morning; Tira's testimony makes no mention of the rifle, Tiffnie's testimony was that she saw the rifle only in Charboneau's hands as he stood over the shot and bleeding Marilyn, and Charboneau claimed that Marilyn took the rifle into the house for only a few minutes before returning with it.
- The alleged letter claims Tiffnie left the house with the .22 rifle that was Tira's gift; Tira, Tiffnie and Charboneau all testified that it was Marilyn's pistol that Tiffnie had. In addition, Charboneau claimed it was Marilyn who initially had the rifle, and admitted using the rifle to shoot Marilyn after he took it away from her.
- The alleged letter claims Tiffnie told Tira that Marilyn had left the house with a rifle named "Calamity Jane"; none of Tira's, Tiffnie's or Charboneau's testimony in any way supports this or makes mention of any such rifle being in Marilyn's possession at any relevant time. (The state also notes that what Tiffnie allegedly told Tira is clearly an additional layer of hearsay.)
- The alleged letter states that Tira's second police statement, about hearing a second group of shots, was fabricated; Tira's, Tiffnie's and

Charboneau's testimony, however, all mention two different shooting episodes.

The letter then claims that special prosecutor Marc Haws told Tira and some of her relatives to "get rid of moms Calamity Jane rifle" so they "went out to the el-rancho property last week [and] buried moms rifle." (Exhibit G, pp. 5-6 (verbatim).) "Last week" at the time the letter was allegedly written would have been the end of August, 1989, years after the trial, years after the first post-conviction, years after Tiffnie and Tira actually lived at "El Rancho," and years after Marc Haws' involvement in the case.

With this context in mind, it is clear that the alleged letter does not set out a viable Brady claim.<sup>5</sup> To the extent Charboneau claims the alleged letter itself is exculpatory evidence suppressed by the prosecution, the alleged letter did not exist prior to trial and there is no evidence that the prosecution played any role in suppressing it (the claim is, apparently, that the letter was intercepted by the court clerk, not anyone associated with the prosecution). Thus, there is no allegation (much less admissible evidence) that the prosecution suppressed material, exculpatory evidence at trial.

To the extent Charboneau claims that the alleged letter is evidence of a Brady violation, such claim fails for three reasons. First, the alleged hiding of the exculpatory evidence by special prosecutor Haws occurred *years after the trial*. Tiffnie testified about other guns in the house and that those guns were at her grandfather's house. (Exhibit 1, p. 93, L. 18 – p. 94, L. 21; p. 109, L. 8 – p. 111, L. 25.) It is therefore apparent from the trial record that all of the guns were available at the time of the trial,

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<sup>5</sup> It is the state's position as well that these wild inconsistencies indicate that the letter is a fabrication and was not authored by Tira Arbaugh.



and Exhibit 8 provides no statement to the contrary. Charboneau has presented no evidence whatsoever that evidence related to guns on the premises of the crime scene were suppressed by the prosecution so as to be unavailable *at the trial*.

Second, the factual recitation in Exhibit G does not support Charboneau's defense as set forth in his own sworn statement. In fact, the two accounts bear almost nothing in common. Because the evidence does not support Charboneau's asserted defense, it was neither exculpatory nor material.

Third, the letter does not mention Tira's testimony at the trial or the preliminary hearing; it asserts only that the written statements to the police were inaccurate. Although the alleged letter gives a version of events contrary to Tira's testimony, there is nothing in the letter to indicate that any person involved in the prosecution asked or otherwise encouraged any false *testimony*.

Finally, the evidence is not material, both because the version of events in the letter is completely implausible and because it would not have made a difference at trial. The letter provides no evidence of who shot Marilyn, nor does it provide any basis for a claim of self-defense. In the face of overwhelming evidence that Charboneau murdered Marilyn, including Charboneau's own confession that he shot her, the information in the alleged letter is neither exculpatory nor material.

The record in this case disproves any claim that the alleged letter is evidence that would support the finding of a Brady violation. The alleged letter is not itself evidence withheld from Charboneau's trial. The contents of the alleged letter do not demonstrate that testimony that would have supported Charboneau's version of events was suppressed or withheld. The letter claims that the hiding of physical evidence

occurred years after the trial itself. Thus, the letter does not show that exculpatory evidence, material to the outcome of the trial, was suppressed by the prosecution. Summary dismissal is appropriate.

### III.

#### The Contents Of The Alleged Letter Are Inadmissible Hearsay

“To justify an evidentiary hearing, the petitioner must tender a factual showing *based on evidence that would be admissible at the hearing.*” Hoffman v. State, 153 Idaho 898, \_\_\_, 277 P.3d 1050, 1055 (Ct. App. 2012) (emphasis added). Such evidence must be in the form of “written statements from witnesses *who are able to give testimony themselves* as to facts within their knowledge or otherwise based upon verifiable information.” Id. (emphasis added). To avoid summary dismissal, the petitioner must present “evidence making a prima facie case as to each element upon which the applicant has the burden of proof” and the court is not required to accept any allegation “unsupported by admissible evidence.” Wolf v. State, 152 Idaho 64, 67, 266 P.3d 1169, 1172 (Ct. App. 2011).

The copy of the alleged letter, even if it is a true and correct copy of a letter actually written by Tira Arbaugh under the circumstances described in the document, contains only hearsay. I.R.E. 801(c) (“Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”). Hearsay is inadmissible as evidence. I.R.E. 802. Because, regardless of whether Tira Arbaugh wrote the alleged letter or not, she is not “able to give testimony [herself],” this petition must be dismissed.

## CONCLUSION

The state respectfully requests this Court to summarily dismiss Charboneau's current petition for post-conviction relief. The petition is untimely because Charboneau knew of his claim no later than 2001 and this same claim has been dismissed once already as untimely. In addition, Exhibit G, even if it were admissible evidence, does not set forth a viable claim of a Brady violation because there is nothing in it that would support a finding that the prosecution suppressed exculpatory, material evidence. Finally, there is no admissible evidence to support Charboneau's claim. For all of these reasons the petition must be dismissed.

DATED this 26<sup>th</sup> day of March, 2013.



KENNETH K. JORGENSEN  
Deputy Attorney General

## CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 26 day of March 2013, I caused to be served a true and correct copy of the foregoing Brief in Support of Second Motion for Summary Dismissal to:

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☐ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile

  
Rosean Newman, Legal Secretary

# **EXHIBIT 1**

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME  
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

JAMIE DEAN CHARBONEAU,

Defendant.

Case No. 1028

PRELIMINARY HEARING TRANSCRIPT

Date: July 20, 1984

Time: 9:40 a.m.

Place: Courtroom of the Magistrate Court  
Jerome County Courthouse  
Jerome, Idaho

Before: HONORABLE BURDICK  
Magistrate

A p p e a r a n c e s:

For the Plaintiff:

DANNIS ADAMSON  
Prosecuting Attorney  
Jerome County Courthouse  
Jerome, Idaho

For the Defendant:

GOLDEN BENNETT and  
RANDY STOKER  
Attorneys at Law  
Twin Falls, Idaho

\* \* \* \* \*

**MAGIC VALLEY REPORTERS**

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PHONE: 734-3300 (Ext. 29)

REPORTED BY ROBERT EVERSON, CSR, CP

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1                    TIFFNIE HALMAN,  
2    called as a witness in behalf of the plaintiff, having duly  
3    been sworn, testified as follows:

4  
5                    DIRECT    EXAMINATION

6    BY MR. ADAMSON:

7                    Q    State your name and address, please.  
8                    A    Tiffnie Halman, Route 5, Jerome, Idaho.  
9                    Q    And who lives at that address?  
10                  A    My grandparents.  
11                  Q    Do they live inside the city limits, or outside?  
12                  A    I think it's inside the city limits.  
13                  Q    How old are you?  
14                  A    I'm 17.  
15                  Q    Do you go by Tiffie?  
16                  A    Yes.  
17                  Q    Who was your mother?  
18                  A    Marilyn Jean Arbaugh.  
19                  Q    And your father?  
20                  A    Richard Lee Halman.  
21                  Q    And are you related in any way to an individual  
22    by the name of J. D. Charboneau?  
23                  A    My mother was married to him.  
24                  Q    Were you adopted by him?  
25                  A    No, I wasn't.



1 Q Tiffie, did your mother ever leave you alone at  
2 night?  
3 A Yes, she did.  
4 Q Did she tell you where she was going?  
5 A Most of the time.  
6 Q Did she tell you when she would be back?  
7 A Most all the time.  
8 Q I draw your attention to the evening of June  
9 21, 1984, do you recall that evening?  
10 A Yes, I do.  
11 Q Did your mother tell you where she was going  
12 that night?  
13 A No. She had been at work.  
14 Q Did she indicate when she was coming home?  
15 A No.  
16 Q Did she come home that evening?  
17 A No, she didn't.  
18 Q Do you know when she did come home?  
19 A The next day.  
20 Q Where did you pick her up?  
21 A In Wendell.  
22 Q And when you picked her up there, where did you  
23 take her?  
24 A To the courthouse.  
25 Q Where in the courthouse?

1 A I stayed outside, I don't know.  
2 Q Was it through the front or the back?  
3 A Through the back.  
4 Q Did she tell you what had happened to her?  
5 A Yes.  
6 Q Were you concerned about what had happened to  
7 her?  
8 A Yes, I was.  
9 Q And about what time was it when you picked  
10 her up in Wendell?  
11 A I don't remember.  
12 Q Even approximately --  
13 A I think it was in the morning late. In the  
14 morning.  
15 Q On June 22?  
16 A Yes.  
17 Q Could it have been early afternoon?  
18 A It could have.  
19 Q Now what did you do on the 23rd of June?  
20 A What did we do? Went home.  
21 Q The next day were you at home together?  
22 A Yes.  
23 Q Did you go on any trips?  
24 A Did I?  
25 Q Or your mother?

1 A Not that I can remember --  
2 Q Did you have an automobile?  
3 A Yes, we did.  
4 Q Did your mother have it at home on the 22nd  
5 or the 23rd?  
6 A She was using my grandfather's pickup.  
7 Q Did you have a vehicle?  
8 A Of my own?  
9 Q Your mother?  
10 A We had the pickup.  
11 Q Did your mother own an automobile?  
12 A Yes, she did.  
13 Q Was it at home?  
14 A No, it wasn't.  
15 Q Did you see her vehicle on the 22nd of June?  
16 A No.  
17 Q Have you seen it since the 22nd day of June?  
18 A No.  
19 Q What kind of car was it?  
20 A A little white Fiat.  
21 Q Do you know what year?  
22 A '74, I believe.  
23 Q What were the characteristics of the automobile?  
24 A A little white stationwagon, Fiat.  
25 Q How many doors did it have?

1 A Two.

2 Q One on each side?

3 A Yes.

4 Q And one in the back, a hatchback?

5 A Yes.

6 Q Three doors, then?

7 A Yes.

8 Q One on each side and in the back?

9 A Yes.

10 Q When was the last time that you saw the white

11 Fiat stationwagon?

12 A The morning, right before she went to work.

13 Q On June 21?

14 A Yes.

15 Q You did not see it after that?

16 A No.

17 Q Between June 21 and the first day of July what

18 did your mother do?

19 A Just regular stuff.

20 Q What regular stuff?

21 A She worked.

22 Q And what days did she work?

23 A I don't remember.

24 Q Do you remember if she worked every day?

25 A Yes, I think so.

1 Q What time did she normally go to work?  
2 A Either at eleven in the morning or three in  
3 the afternoon.  
4 Q What time did she normally get off?  
5 A Nine.  
6 Q If she went to work at eleven she was off by  
7 nine?  
8 A Yes.  
9 Q And at three --  
10 A Usually nine.  
11 Q And during that time period between June 22  
12 and the 1st of July, did she work during that period of  
13 time?  
14 A Yes, she did.  
15 Q What was her normal days off?  
16 A Sundays.  
17 Q And during that time period did she have a  
18 day off?  
19 A Yes, she did.  
20 Q And what day would that have been.  
21 A It would have been the day right after she came  
22 back.  
23 Q So after that she worked every day?  
24 A I think so, yes.  
25 Q To the best of your knowledge did she go on any

1 lengthy trips or any vacations during that period of  
2 time?

3 A No.

4 Q To the best of your knowledge was she with you  
5 in the evenings during that period of time?

6 A Yes.

7 Q I draw your attention, Tiffie, to the 1st day  
8 of July, 1984, in the morning, Sunday morning, do you  
9 recall that date and time?

10 A Yes, I do.

11 Q How do you recall that?

12 A What do you mean?

13 Q How do you recall that date? Why does it stand  
14 out in your mind?

15 A That's the day she was killed.

16 Q Starting in the morning about ten, could you  
17 tell me what happened?

18 A I was asleep.

19 Q What happened after you woke up, and when did  
20 you wake up?

21 A About eleven, when Mom came home.

22 Q Did she tell you where she had been?

23 A Yes.

24 Q What did she indicate?

25 A That she had been with Pete Jones and Ray Broder.

1 MR. BENNETT: Your Honor, I'll object to the  
2 hearsay nature of the answer.

3 MR. ADAMSON: Your Honor, we would indicate  
4 that this would be an exception to the hearsay rule,  
5 inasmuch as it's the then-existing statement of the  
6 declarant's mind --

7 THE COURT: The objection will be sustained.

8 Q What time did your mother get home?

9 A About eleven.

10 Q What kind of a mood was she in?

11 A A good mood.

12 Q How could you tell?

13 A She was always in a good mood.

14 Q What was she wearing?

15 A When she came home?

16 Q Yes.

17 A Levis and a western short. No, a sweatshirt.

18 Q Did she have cowboy boots on?

19 A Yes, I remember they were mine.

20 Q What did she do right after that?

21 A (No response)

22 Q Had she brought you anything?

23 A No.

24 Q Had she brought you any magazines?

25 A Yes, and calendars.



1 Q What kind of magazines?  
2 A Horse Times and Horse Newspaper.  
3 Q And what did she do after she got home?  
4 A (No response)  
5 Q Did she give the magazines and calendars to  
6 you?  
7 A Yes.  
8 Q Just to you?  
9 A To me and my little sister.  
10 Q After she gave you the magazines and calendars  
11 what did she do?  
12 A Went in the bathroom.  
13 Q What happened after that?  
14 A When I got up and went in the bathroom she was  
15 drying her hair and putting her shorts on.  
16 Q What kind of shorts?  
17 A Blue and white shorts, an outfit that matched,  
18 top and bottom.  
19 Q Did she have anything else on?  
20 A Yes, thongs and sunglasses.  
21 Q After she got dressed, then what happened?  
22 A She went out to call my grandfather.  
23 Q And how long was she outside?  
24 A Probably 10 minutes.  
25 Q And then did she come back to the house?

1           A   Yes, she did.

2           Q   Now why did she go outside the house to call  
3 your grandfather?

4           A   I really don't know.

5           Q   Do you know why she wanted to talk to him?

6           MR. BENNETT: Your Honor, I'm having a hard  
7 time hearing the witness.

8           THE COURT: You'll have to speak up. Proceed.

9           Q   Do you know why she would have to go outside to  
10 call your grandfather?

11          A   Because we used the phone out in the shop,  
12 Duane Brown's shop.

13          Q   Who is he?

14          A   The man who farms the place that we lived on.

15          Q   And where was the shop located?

16          A   Right next to the house.

17          Q   What would be to the south of the shop?

18          A   I don't know what the question is.

19          Q   Would there be any buildings directly across  
20 from the shop?

21          A   Yes, the spud cellar and barn.

22          Q   What kind of barn was that.

23          A   There was a walkway through for the horses to  
24 stand in --

25          Q   Were there corrals involved with that?

1 A Yes.

2 Q And from the shop where the telephone was at,  
3 could you see the corrals and the barn and the potato  
4 cellar.

5 A Yes.

6 Q Now after she was out there for a period of  
7 time, I believe you said about 10 minutes, then what  
8 happened?

9 A She came in and asked me if we had turned the  
10 horses out into a different corral.

11 Q What did you tell her?

12 A No, that we had not.

13 Q Were the horses not where they were supposed  
14 to be?

15 A Yes, they were supposed to only be in the far  
16 one.

17 Q As a result of this statement by you to your  
18 mother, what then happened?

19 A I asked her if she wanted me to go put them  
20 back, and she said she would do it.

21 Q Did she seem excited about this?

22 A No.

23 Q Did she seem particularly disturbed that they  
24 were out?

25 A No.

1 Q Now at the time you had this conversation about  
2 the horses being out, did she have anything in her hands?  
3 A No. Well, she had a pick, a hair pick.  
4 Q What's a hair pick?  
5 A When they curl your permanent you pick your  
6 hair out with it.  
7 Q Kind of a comb affair?  
8 A Yes.  
9 Q Did she have anything else with her?  
10 A No.  
11 Q Did she have sunglasses on?  
12 A Yes, she did.  
13 Q Did she have any other type of clothing on?  
14 A No.  
15 Q Did this outfit have any pockets?  
16 A No.  
17 Q Did it look like she had anything in the  
18 waistband of her pants or anything?  
19 A No.  
20 Q Where were you when you were talking about the  
21 horses?  
22 A Laying on the bed.  
23 Q Inside the house?  
24 A Yes.  
25 Q And did you have your clothes on?

1 A No, I had my nightgown on.

2 Q So she went out to put the horses in, is that

3 correct?

4 A Yes.

5 Q What happened after she went out to put them

6 in?

7 A I heard shots.

8 Q How long after she had left was it before you

9 heard shots?

10 A I don't know. I was into my book pretty much.

11 Q What book?

12 A The book I had been reading.

13 Q Was it longer than a minute after she had left?

14 A I think so.

15 Q Was it longer than five minutes after she had

16 left?

17 A No, I don't think so.

18 Q Now are you familiar with .22 rifles?

19 A Yes.

20 Q How are you familiar with them?

21 A I have one of my own.

22 Q And do you still have one of your own?

23 A Yes.

24 Q What kind is it?

25 A Savage .22 automatic rifle.

1 Q Automatic or simi-automatic?  
2 A It spaces them out.  
3 Q Do you have to pull the trigger each time you  
4 want a shell to discharge?  
5 A Yes.  
6 Q And where is that rifle now?  
7 A In my grandfather's house.  
8 Q Now on July 1, 1984, where was that rifle  
9 located?  
10 A In the closet in our house.  
11 Q And on July 2, was the rifle still in the  
12 closet?  
13 A Yes, it was.  
14 Q At any time between the first and second days  
15 of July did you move the rifle?  
16 A On the 2nd we did.  
17 Q Why did you move it then?  
18 A Because we started moving things out of our  
19 house.  
20 Q Where did you move it to?  
21 A To my grandfather's house.  
22 Q Had you ever shot that .22?  
23 A Yes.  
24 Q Are you familiar with the sound of the discharge  
25 of a .22 rifle?

1 A Yes..

2 Q And to the best of your knowledge is it different

3 than the sound of other guns discharging?

4 A Yes, it kind of has an airy sound.

5 Q When you shoot it?

6 A Yes.

7 Q And while you were lying on your bed you said

8 you heard shots.

9 What kind of shots did you hear?

10 A Well, .22 shots, or I heard gunshots, I didn't

11 think about what it was.

12 Q Have you given it any thought since then?

13 A No.

14 Q What did the shots sound like to you?

15 A Like .22 shots.

16 Q What did you do after you heard those shots?

17 A I jumped out of bed.

18 Q Why?

19 A Because I knew that it must have been Mom,

20 because I heard her scream.

21 Q Had you ever heard your mother scream before?

22 A Not like that.

23 Q How would you describe the scream?

24 A A frightened scream, scared.

25 Q It wouldn't be something related to the horses?



1 A No.

2 Q And you knew it was your mother scream?

3 A Yes.

4 Q What did you do after she screamed?

5 A I started running outside, and I found my mom's

6 .22 --

7 Q Where was it?

8 A Tucked inside of her purse.

9 Q What kind of a .22 was it?

10 A Just a .22 pistol.

11 Q Was it semi-automatic?

12 A Yes.

13 Q How long had your mother had that?

14 A A couple of years.

15 Q Has she always carried that in her purse?

16 A Most of the time she carried it with her in

17 the car, or backpacking or someplace.

18 Q And did you say it was inside or outside --

19 A Inside.

20 Q And so you pulled it out?

21 A Yes, I did.

22 Q Why did you do that?

23 A I don't know.

24 Q Were you frightened for your mother?

25 A Yes, I was.

1 Q What happened next?

2 A I ran out to the barn.

3 Q And where was the barn located?

4 A Just right across from our house.

5 Q What part of the barn did you run to?

6 A The alley-way of it.

7 Q Where in the alley-way did you run to?

8 A Right to the door.

9 Q And what happened next?

10 A I seen my mom sitting on the ground, and Jamie

11 standing over her.

12 Q When you say Jamie, who do you mean?

13 A Jamie Charboneau.

14 Q Is this the person your mother was married to

15 at one time?

16 A Yes.

17 Q And how long was she married to him?

18 A I don't know - not very long.

19 Q You would recognize him if you saw him again?

20 A Yes.

21 Q Is he in the courtroom today?

22 A Yes, he is.

23 Q Could you point to him for me?

24 A Right there.

25 MR. ADAMSON: Your Honor, may the record reflect

1 that the witness has identified the defendant?

2 THE COURT: Any objection, Mr. Bennett?

3 MR. BENNETT: No objection.

4 THE COURT: The record will so indicate.

5 Q You indicated your mother was sitting on the

6 ground.

7 Where in the alley-way or walk-way was she

8 sitting?

9 A Down by the feed bunks.

10 Q About how far, do you recall, Tiffie, from the

11 doorway?

12 A I don't know feet or yards, just quite a ways

13 down.

14 Q And you could recognize her as your mother?

15 A Yes, I could.

16 Q And how was she sitting?

17 A She was sitting on her behind with one hand up

18 on her shoulder.

19 Q Which hand was on her shoulder?

20 A Her right hand on her left shoulder.

21 Q And which part of her body was closest to the

22 door.

23 A Her left shoulder was.

24 Q Could you tell why she was holding her shoulder?

25 A There was blood on her hand.

1 Q Did you see any other blood when you looked in  
2 through the doorway?  
3 A Some on her legs.  
4 Q Both legs?  
5 A No, I could only see her left leg.  
6 Q And where, exactly, was Mr. Charboneau?  
7 A Standing beside her.  
8 Q On which side of her, closer to the wall or the  
9 feed bunks?  
10 A Closest to the feed bunks.  
11 Q And what happened when you walked to the  
12 doorway?  
13 A They both told me to leave.  
14 Q Was there any other things that they both  
15 said together?  
16 A No, that was it.  
17 Q And did you say anything?  
18 A Yes. I asked him to leave, told him I was  
19 going to call the police if he didn't.  
20 Q Did he say anything as a result of that  
21 conversation?  
22 A He told me to leave, and he would take her to  
23 the doctor.  
24 Q Now you mentioned that you had heard shots.  
25 Do you recall how many shots you heard?

1 A No, I don't. I don't know the exact count.  
2 Q Was it more than three?  
3 A Yes, it was.  
4 Q Could it have been as many as ten?  
5 A It could have been.  
6 Q How rapid were the shots that you heard?  
7 A Pretty rapid.  
8 Q How rapid?  
9 A I don't know.  
10 Q A second apart, or faster?  
11 A About a second apart.  
12 Q How long after you heard the shots was it  
13 before you had taken the gun from your mother's purse and  
14 went to the barn?  
15 A I don't know. It happened real fast.  
16 Q Other than when your mother indicated to  
17 you to get out of there, did your mother say anything else  
18 to you?  
19 A No.  
20 Q Was she sitting up or lying down?  
21 A Sitting up.  
22 Q What did you do next?  
23 A Went and called the police.  
24 Q Where did you call the police at?  
25 A At the shop.

1 Q How long did that take?  
2 A To call the police? I don't know.  
3 Q Do you recall approximately when it was that  
4 you called them?  
5 A No, I don't.  
6 Q Was it before noon?  
7 A I think so.  
8 Q And then what did you do?  
9 A I ran in the house and got my little sister  
10 out of the bathtub.  
11 Q What did you tell her?  
12 A I told her that Jamie shot Mom, that they were  
13 out in the barn. I told her to get dressed.  
14 Q Did she?  
15 A Yes, she did.  
16 Q And where was she getting dressed?  
17 A In her room.  
18 Q Was that also your bedroom?  
19 A No, she shared a room with my mom.  
20 Q Now did you do anything else before you talked  
21 to -- what did you do after your sister started getting  
22 dressed?  
23 A I hid the keys.  
24 Q What keys?  
25 A To the pickup.

1 Q Whose pickup?  
2 A My grandfather's.  
3 Q And why did you do that?  
4 A So he, Jamie couldn't get the pickup.  
5 Q Why were you afraid he would take it?  
6 A Because I didn't see any other vehicle around  
7 there.  
8 Q Did you do anything else?  
9 A I got dressed myself.  
10 Q So when you went out to the barn you were in  
11 your nightgown?  
12 A Pajamas.  
13 Q And then what did you do? After you hid the  
14 keys, what happened?  
15 A We ran out back behind the sheep wagon.  
16 Q Did anything else happen while your sister was  
17 getting dressed?  
18 A Yes. We heard more shots.  
19 Q Were they like before, or different shots?  
20 A More shots.  
21 Q Did they sound like the first ones you had  
22 heard?  
23 A Yes, they did.  
24 Q How many shots did you hear the second time?  
25 A Three or four.

1 Q Could it have been more than three or four?  
2 A It could have been.  
3 Q Was it less than three?  
4 A I don't think so.  
5 Q So after you heard these shots, what did you  
6 do?  
7 A Ran out back behind the sheep wagon.  
8 Q Where was that?  
9 A Right between the shop and our house.  
10 Q What did you do behind the sheep wagon?  
11 A We were yelling for Mom to answer us.  
12 Q How were you yelling for her?  
13 A Screaming at her, calling her name.  
14 Q What did you say in an attempt to get her  
15 attention?  
16 A Just yelling at her, asking her to talk to  
17 us.  
18 Q And while you were doing that did you see  
19 anything?  
20 A No, I didn't.  
21 Q What were you looking at as you were calling  
22 her name?  
23 A The barn door.  
24 Q What happened next?  
25 A I accidentally fired off the gun into the ground,



1 and I knew I had to get rid of that or I'd hurt somebody  
2 if I didn't put it away, so I put it away.

3 Q The pistol?

4 A Yes.

5 Q Where did you put it?

6 A In the house.

7 Q And then you came back out?

8 A Yes.

9 Q Did you have a gun with you when you came out  
10 of the house then?

11 A No, I never.

12 Q What did you do then?

13 A I ran out to the barn.

14 Q And what did you see when you went out to the  
15 barn?

16 A My Mom was laying down.

17 Q Was anybody else in the barn?

18 A No.

19 Q Now from the time you heard the second shots  
20 until you went into the barn, or to the barn door, or  
21 alleyway or walkway, how much time had elapsed, do you  
22 think, Tiffie?

23 A Two or three minutes. It happened really fast.

24 Q From the time you came out of the house with  
25 your sister and hid behind the sheep wagon, did you

1 keep your eyes constantly on the front door of the barn?

2 A One of us did, yes.

3 Q Did anyone come out or go in that door?

4 A I didn't see anyone.

5 Q And did you see anyone go out through the

6 corrals?

7 A No, I never.

8 Q Did you see anyone leave at all?

9 A No, I didn't.

10 Q So when you got to the barn door the second

11 time, other than your mother lying on the ground, did you

12 see anyone?

13 A No, I never.

14 Q Was Jamie Charboneau still present?

15 A No, he wasn't.

16 Q What did you do next?

17 A I ran to my mom.

18 Q And what did you do when you got there?

19 A I picked her head up.

20 Q And did she speak to you?

21 A No.

22 Q Did you notice anything about her at this time

23 that was different than the first time you had seen her?

24 A No, just laying down.

25 Q When you saw her the first time from the barn

1 door, was there any blood across the upper portion of  
2 her torso, say above her belly button?  
3 A I couldn't see.  
4 Q Did she have any blood across her upper torso  
5 the second time?  
6 A Yes, she did.  
7 Q And could you see it?  
8 A Yes, I could.  
9 Q How could you see it, where was it?  
10 A It was on the shirt.  
11 Q Could you see any wounds on your mother?  
12 A Yes, I could.  
13 Q How could you see the wound?  
14 A Because the shirt had slid down.  
15 Q Now what kind of shirt was this?  
16 A A little blue terrycloth shirt with --  
17 Q And it had pulled down farther than it would  
18 normally rest when she was wearing it?  
19 A Yes.  
20 Q What did you see?  
21 A I seen three holes across her chest.  
22 Q Did you see a gun laying beside her?  
23 A No, I never.  
24 Q Did you see anything laying beside her.  
25 A No.  
Q Nothing there?

1           A   No.

2           Q   You picked up her head, as you've testified,  
3   what happened next?

4           A   I closed her eyes.

5           Q   How did you do that?

6           A   With my fingers.

7           Q   Had she passed out by that point?

8           A   Yes, she had.

9           Q   Did she say anything to you at all?

10          A   No, she never.

11          Q   Had she looked at you?

12          A   Kind of, in a way.

13          Q   How do you mean?

14          A   It seemed like one moment she was looking at  
15   me, and the next she wasn't. She was staring at me, but  
16   she wasn't looking at me any more.

17          Q   Did you notice any other blood on her, other  
18   than her chest and arm?

19          A   Yes, there was blood starting to come out of  
20   her mouth and nose.

21          Q   And what happened next?

22          A   I pulled her sunglasses off, closed her eyes,  
23   laid her head down, went to the shop and called my  
24   grandfather.

25          Q   Did your sister come down to see your mother?

1 A For just a moment.

2 Q She had her sunglasses on when you went to her?

3 A Yes.

4 Q You took them off?

5 A Yes.

6 Q Who did you call?

7 A My grandparents.

8 Q Did you call anyone else?

9 A My sister called her boyfriend, and I called

10 mine.

11 Q Were the police re-notified?

12 A My sister tried calling an ambulance, but got

13 the police.

14 Q Did she talk to the police?

15 A I think so - I don't know.

16 Q Now how long after you shut your mother's eyes

17 and went back to the house was it before you saw the law

18 enforcement arrive at the house?

19 A It seemed like a long time.

20 Q How long do you think?

21 A I don't know.

22 Q Was it longer than five minutes?

23 A I couldn't say.

24 Q During that time, while you were waiting for

25 the law enforcement to come, where did you stay?

1 A Right at the opening of the door of the barn.  
2 Q Where the walkway was?  
3 A Yes.  
4 Q During the time that you were there, until the  
5 police arrived, did you see anyone come to the farm or  
6 leave the farm, or do anything out of the ordinary?  
7 A No..  
8 Q You mentioned that you had a .22 rifle, and  
9 your mother had a .22 pistol.  
10 To your knowledge were there any other guns  
11 out at that farm?  
12 A At that time there were two broken guns in the  
13 house.  
14 Q That didn't work?  
15 A Yes.  
16 Q Do you know what caliber they were?  
17 A One is a .22 and the other, I think, is a .32  
18 or something, I don't know.  
19 Q Where are those guns now?  
20 A At my grandafther's house.  
21 Q If I wanted to get them I could go pick them  
22 up there?  
23 A They're packed, and I don't know where they're  
24 at.  
25 Q We could find them if we wanted to?

1           A   Yes, we could.

2           Q   Were there any other rifles or pistols located  
3   at that home, or in the vicinity of the home, that you're  
4   aware of?

5           A   No.

6           Q   You mentioned your boyfriend, did he have any  
7   guns?

8           A   Yes.

9           Q   What kind of guns did he have?

10          A   A .22 rifle and a .22 pistol.

11          Q   And where were they located?

12          A   In his pickup.

13          Q   Was his pickup there at the ranch at the time  
14   of this incident?

15          A   No, it wasn't.

16          Q   Where was he?

17          A   At work.

18          Q   Was there any other guns, to your knowledge,  
19   that were located in or about the premises?

20          A   A BB gun.

21          Q   Where is that gun located?

22          A   At my grandfather's house.

23          Q   Did you, or any member of your family, have a  
24   Remington .22 semi-automatic rifle?

25          A   No, I don't think so.

1 Q Regarding Mr. Charboneau, Tiffie, did he ever  
2 wear hats?  
3 A Yes, he did.  
4 Q What kind of hat did he wear?  
5 A A cowboy hat.  
6 Q Did he wear one frequently?  
7 A Yes, all the time.  
8 Q What do you mean, "all the time"?  
9 A He hardly ever took it off.  
10 Q Did he wear it in the house?  
11 A Sometimes.. Most of the time.  
12 Q Did he wear a hat in vehicles?  
13 A Yes.  
14 Q And what kind of hat did he wear?  
15 A A cowboy hat.  
16 Q Can you describe what kind of cowboy hat?  
17 A Just a normal cowboy hat.  
18 Q Were they low topped, high topped?  
19 A High tops.  
20 Q Showing you what has been admitted as Exhibit  
21 T, have you ever seen that hat before?  
22 A I've seen a similar hat. I couldn't tell if it  
23 was the same hat.  
24 Q Did Mr. Charboneau wear a hat of this variety?  
25 A Yes, he did.



1 Q What did Mr. Charboneau do for a living?  
2 A I don't know. He worked at construction for  
3 a while, and as a cowboy.  
4 Q As a cowboy?  
5 A Yes.  
6 Q Did he ever work on the rodeo circuit?  
7 A I don't know. He rodeoed.  
8 Q Did he ever indicate to you that he was a  
9 rodeo clown?  
10 A Yes, he did.  
11 Q That he did that as a partial way of making a  
12 living?  
13 A Yes.  
14 Q Had you ever seen him be a rodeo clown?  
15 A Yes.  
16 Q At how many rodeos.  
17 A I think we only watched him do it once at a  
18 rodeo.  
19 Q To the best of your knowledge he's done it  
20 more than --  
21 A I take that back, I've seen him do it twice.  
22 Q When you walked out to the alleyway by the  
23 barn, did Mr. Charboneau have anything in his hands?  
24 A Yes, a gun.  
25 Q Could you tell what kind of gun it was?

1 A It looked like a .22 rifle.  
2 Q And did he ever point the gun at your mother?  
3 A Yes.  
4 Q Did he ever point the gun at you?  
5 A Yes.  
6 Q So you had a good chance to take a good, close  
7 look at it?  
8 A Yes .  
9 MR. ADAMSON: Nothing further at this time,  
10 your Honor.  
11 THE COURT: Cross examination?  
12  
13 CROSS EXAMINATION  
14 BY MR. BENNETT:  
15 Q Did you know that Jamie -- before the horses  
16 got out did you then know that Jamie was in the barn?  
17 A No, I didn't.  
18 Q Had you been out to the barn or to the tack  
19 room at any time in the two or three days before that?  
20 A No, I hadn't.  
21 Q Did you see anyone around the barn, whether you  
22 knew it was Jamie or not?  
23 A Well, we had all been out around it. I don't  
24 recall of anybody going in there.  
25 Q Had you noticed your mother, two days before,

1 taking any food out to the barn?

2 A No, I hadn't.

3 Q Later, after the shooting, did you find some  
4 Kool-Aid glasses and wrappers and some food, generally,  
5 out there?

6 MR. ADAMSON: I'll object as beyond the scope  
7 of direct examination.

8 THE COURT: Well, in order to save him recall-  
9 ing the witness, I'll let him ask the question. Overruled.

10 A Well, I never seen a Kool-Aid glass, but there  
11 was bubblegum wrappers out in the spud cellar.

12 Q What all did you take in that was out in the  
13 tack room? To the police.

14 A My mother's snow suit.

15 Q Your mother's snow suit?

16 A Yes.

17 Q Why was it found out there, do you know?

18 A I don't know.

19 Q Anything besides the snowsuit?

20 A No.

21 Q Did you see any cheeseburger wrappers out  
22 there?

23 A No, I never.

24 Q Did you see a pair of Levi's out there, that  
25 were freshly laundered but not new?

1 A No.

2 Q Did you see any peanutbutter jars?

3 A No, I didn't.

4 Q Did you see any bread wrappers?

5 A No.

6 Q Did you see any bread at all?

7 A No.

8 Q What was in the tack room when you saw it?

9 A A cot was laid out, and my mother's snowsuit  
10 and an orange coat, lounge chair --

11 Q Do you know why that lounge chair was there?

12 A No, I don't.

13 Q Do you know how long it had been there?

14 A No, I don't.

15 Q When was the last time you had been in the tack  
16 room prior to this July 1 --

17 A I don't know, a couple of days.

18 Q When you were there a couple of days before this,  
19 wasn't there a chair there?

20 A Yes. It was there, but it wasn't laid out,  
21 though.

22 Q Where was it?

23 A It was all folded up and laying down, hay on it --

24 Q You're sure it was in that same room?

25 A Yes, it was.

1 Q How long had it been in that condition, with  
2 the hay on it?  
3 A Ever since we moved there.  
4 Q Were there any clothes laying around?  
5 A No.  
6 Q A couple of days before, on about -- on either  
7 Wednesday or Thursday, do you remember your mother coming  
8 home and bringing you a cheeseburger?  
9 MR. ADAMSON: Objection, that's beyond the  
10 scope of direct examination. Without some other showing  
11 I don't see how it's relevant.  
12 THE COURT: What's the relevance, Mr.  
13 Bennett?  
14 MR. BENNETT: Well, your Honor, the  
15 relevance is that it's my understanding that he had been  
16 there for several days, and I want to establish that fact,  
17 if I can.  
18 THE COURT: By bringing her a cheeseburger?  
19 MR. BENNETT: Just laying a foundation for  
20 the next question, your Honor.  
21 THE COURT: The objection is overruled.  
22 Q Did your mother bring you or your sister a  
23 cheeseburger from the Butte Cafe, or get you one, or  
24 something, a day or two before that?  
25 A I don't think so.

1 Q You don't remember?

2 A I don't remember.

3 Q Did your mother go out to the barn two or three

4 times during those two days before the shooting?

5 A I don't know.

6 MR. ADAMSON: Objection, your Honor,

7 assuming facts not in evidence, and --

8 THE COURT: Overruled.

9 Q Had your mother come home the evening before,

10 on the 21st, and I think you've already said she came

11 home about eleven o'clock, that she was with these two --

12 MR. ADAMSON: Objection, assuming facts

13 not in evidence.

14 THE COURT: It's in evidence; overruled.

15 (Discussion off the record)

16 MR. BENNETT: I guess I have the date

17 wrong, your Honor --

18 Q The date I'm referring to is July 1, Sunday,

19 July 1, when you stated that she came home about eleven

20 o'clock --

21 A Yes.

22 Q That she had been out all night, she told

23 who she was with --

24 A Yes.

25 Q -- these people you've known for some time --

1                   The day before that, did she stay out all  
2   night that day too?

3                   A   The Friday before --

4                   Q   Yes, Friday night.

5                   A   No, she was home.

6                   Q   What time did she get home?   Didn't she get  
7   home early in the morning that day?

8                   A   I can't remember.

9                   Q   And the day before that, at least two days,  
10   maybe three days, she didn't come home until the wee  
11   hours of the morning, either, until daylight --

12                  A   Sometimes she did, not every day.

13                  Q   Not every day, no, but didn't it happen two  
14   or three times that week?

15                  A   It might have.

16                  Q   And your boyfriend was living there in the same  
17   house with you?

18                  A   Yes.

19                  Q   Do you remember where you were during -- on  
20   from, say, noon to five o'clock on Saturday?

21                  A   Over in Wendell.

22                  Q   On Friday do you recall where you were about  
23   those hours?

24                  A   I must have been home.

25                  Q   Are you sure you were home?

1           A   No.

2           Q   And what about Wednesday?

3                   MR. BENNETT: I'm not necessarily expecting

4   you to remember, but if there was something about anything

5   that happened --

6           Q   Do you remember if you were home in the after-

7   noon hours of Wednesday, Thursday and Friday?

8           A   I think we were home.

9           Q   During which of those days?

10          A   All of them, Wednesday, Thursday and Friday.

11          Q   You think you were home Wednesday, Thursday

12   and Friday, all afternoon?

13          A   I think so, but I don't remember.

14          Q   I thought you said you went to Wendell one of

15   those days.

16          A   Saturday.

17          Q   You weren't going to school at that time, were

18   you?

19          A   No.

20          Q   You didn't have a job?

21          A   No.

22          Q   What about your boyfriend, did he work?

23          A   He worked, yes.

24          Q   What hours?

25          A   Six to six.



1 Q Did you have transportation at that time?  
2 A No, I didn't.  
3 Q So whenever you would leave, you had to leave  
4 with someone?  
5 A Yes.  
6 Q Were you always there at the same time your  
7 sister was there?  
8 A All except for Saturday.  
9 Q Do you remember what hours your mother worked  
10 on Friday?  
11 A No, I don't.  
12 Q Do you recall on Thursday - Wednesday or  
13 Thursday, or any of those dates, specifically what hours  
14 she worked?  
15 A No.  
16 Q Did I understand your other testimony correctly  
17 that -- you said she either went to work at noon or three.  
18 A Eleven or three.  
19 Q And when she went to work at eleven did she  
20 get off early?  
21 A No, she would still get off at the same time.  
22 Q She would still get off at nine?  
23 A Yes.  
24 Q Was it dark yet, at nine, that time of the  
25 year?

1                   A   No.

2                   Q   Do you ever recall, in those three days, after  
3                   your mom got home at nine, of her going straight out to  
4                   the barn?

5                   A   No.

6                   Q   Do you know that she didn't, or just --

7                   A   I don't remember. I don't think she did.

8                   Q   Do you remember for sure if you were home  
9                   those three days about nine?

10                  A   At about nine? I don't remember.

11                  MR. BENNETT: That doesn't help with  
12                  regard to a cheeseburger --

13                  Q   Could she have brought you a cheeseburger,  
14                  or one for your sister, back from work about nine on one  
15                  of those three days?

16                  A   (No response)

17                  Q   Could she have taken your sister to the  
18                  restaurant for a cheeseburger?

19                  A   I think Thursday she took her over for a  
20                  burrito.

21                  Q   Do you remember whether she brought some food  
22                  back that Thursday when they went for the burrito?

23                  A   I don't know.

24                  Q   Do you remember that Thursday evening, of  
25                  her going to the barn after coming back?

1 A No.

2 Q Could she have, without your knowledge?

3 A No, because we have a small house, we can

4 see where everybody is at.

5 Q Does your sister have a .22 also?

6 A No.

7 Q Would she like to have one?

8 A I'm sure she would.

9 Q Did your mother ever discuss anything about

10 a present for your sister, a .22?

11 A No.

12 Q Did your mother ever tell you she was getting

13 her one?

14 A No.

15 Q Was there a rifle range close to where you

16 were living?

17 A Yes.

18 Q Had you ever sighted-in your rifle at that

19 range?

20 A It doesn't have sights on it.

21 Q Had you ever fired a rifle at that range?

22 A Yes.

23 Q Had your mother?

24 A Yes.

25 Q Had Jamie?

1           A   I don't know - not with me.  
2           Q   How about your sister?  
3           A   Yes.  
4           Q   And was there anything special about Sunday,  
5 as being a good day to do that?  
6           A   No.  
7           Q   Can you do it any time you want to?  
8           A   Yes.  
9           Q   Is your sister just beginning junior high  
10 school?  
11          A   Yes.  
12          Q   Had your mother bought anything for her  
13 graduation --  
14          A   She was supposed to be buying her a hope  
15 chest.  
16          Q   Was there ever a discussion about a saddle?  
17          A   I don't know. Not around me, no, it was  
18 mostly a hope chest.  
19          Q   You never heard any discussion about a saddle  
20 or a rifle?  
21          A   No.  
22          Q   Did your mother - and think about this very,  
23 very carefully - have any boxes - two boxes of shells -  
24 .22 shells - that she would have first had in her possession  
25 around Thursday evening, Wednesday or Thursday evening, did

1     you see any two boxes of shells that you had not seen  
2     before that?

3             A   No, I didn't.

4             Q   Did you see any empty boxes?

5             A   No.

6             Q   Had you seen any evidence of any shells that  
7     your mother had purchased recently?

8             A   No.

9             Q   Do you know when she had purchased whatever  
10    shells she had for her .22?

11            A   No, I don't.

12            Q   Did you see whether there were any shells in  
13    her purse?

14            A   No.

15            Q   Other than in the gun?

16            A   No.

17            MR. BENNETT: I'm changing the subject now --

18            Q   Did you see Jamie just one time that day?

19            A   Yes.

20            Q   The one time that you went into the barn, and  
21    you didn't see him the second time you went in?

22            A   Yes.

23            Q   And how close was he to your mother when you  
24    went -- saw him in there?

25            A   He was standing right next to her.

1 Q Were they embracing?  
2 A No, they weren't.  
3 Q Who told you to leave first, your mother or  
4 Jamie?  
5 A They told me at the same time.  
6 Q Was that all they said?  
7 A That was all my mother said.  
8 Q Do you recall the exact words she used?  
9 A She said, "Get out of here."  
10 Q Do you recall the words Jamie used?  
11 A He told me to get out, too.  
12 Q Did you have the gun in your hand at that time?  
13 A Yes, I did.  
14 Q Did you aim it, the gun, at either of them?  
15 A No, I never - it was at my side.  
16 Q Was it loaded?  
17 A Yes, it was.  
18 Q Did it accidentally fire at that time?  
19 A No.  
20 Q Did you fire the gun at all at any time,  
21 inside the barn?  
22 A No, I never.  
23 Q At the time you mentioned that it accidentally  
24 went off, was that when you went out to the sheep camp?  
25 A The sheep wagon, yes, it was behind that wagon.

1 Q When did you take it back in the house?  
2 A Right after it went off.  
3 Q Could Jamie see that you had a pistol in your  
4 hand?  
5 A Yes, he could.  
6 Q Didn't your mother also own a gun that you  
7 call Betsy or Rufus, or some name for a gun, that's a  
8 sawed-off shotgun?  
9 A No.  
10 Q You've never discussed that?  
11 A No.  
12 Q Do you know that she doesn't have one?  
13 A I do know that she doesn't have a shotgun.  
14 Q Do you recall hearing your mother say anything  
15 when you came out with the pistol like, "You brought the  
16 wrong gun"?  
17 A No, I don't.  
18 Q She didn't say anything like that?  
19 A No.  
20 Q Does anyone, whether he's a neighbor, your  
21 boyfriend - does he own a sawed-off shotgun?  
22 A He did have a shot gun.  
23 Q Did it have a name, like Rufus, or something?  
24 A No.  
25 Q Did you name any of your guns?

1           A   Yes, two of our .22s have pet names.  
2           Q   What are they?  
3           A   There's one little .22 Pedro and my mother's  
4           .22 was Jose.  
5           Q   Those were the only two guns that were named  
6           like that?  
7           A   Yes.  
8           Q   Did your mother call for you, or did you hear  
9           her call for you to bring a gun?  
10          A   No, I didn't.  
11          Q   How did you know the gun was in your mother's  
12          purse?  
13          A   I just assumed it was there.  
14          Q   How long had she been carrying the gun?  
15          A   She always carried a gun.  
16          Q   Had you ever been present when your mother  
17          had shot at Jamie?  
18               MR. ADAMSON:  Objection, beyond the scope  
19          of direct examination.  I know --  
20               MR. BENNETT:  I'll withdraw the question,  
21          your Honor.  
22               THE COURT:  You may do so.  
23          Q   What was the demeanor of both your mother  
24          and Jamie when you went inside?  Was your mother  
25          scared?



1 A I don't know --  
2 Q They both told you to leave?  
3 A Yes.  
4 Q Was there any real difference in the demeanor  
5 of Jamie than that of your mother?  
6 A I don't understand your question.  
7 Q Well, facial expression, attitude and that  
8 type of thing, was there any basic difference between the  
9 two of them?  
10 A Yes.  
11 Q Why do you think your mother told you to  
12 leave?  
13 A Because she was scared for me, I suppose.  
14 Q Do you think that's also why Jamie told you to  
15 leave?  
16 A That he was scared for me? No, I think he  
17 just wanted me to get out of there. I don't know.  
18 Q Hadn't you always thought quite a lot of  
19 Jamie, before they fought so much?  
20 A No, I never liked him.  
21 Q It was your sister that liked him?  
22 A Yes.  
23 Q What didn't you like about him?  
24 A I don't know. I just never liked him. When  
25 I saw him at first I didn't like him.

1 Q Was it a bad dislike or you weren't just  
2 particularly --

3 A I just didn't care for him. When he lived  
4 with us I usually stayed away.

5 Q Was there any jealousy because his age  
6 and yours were so close, and he took your mother away  
7 from you?

8 A No.

9 Q You don't think so?

10 A No, I don't think so.

11 Q Was there any indication that he didn't care  
12 for you, or --

13 A I thought he liked me.

14 Q Think again, if you can, about any differences  
15 in attitude in Jamie saying to you to leave and your  
16 mother saying to leave.

17 A (No response)

18 Q Could they both have had the same motive?

19 A They could have, but I don't think so.

20 Q Had your mother ever expressed to you, in the  
21 two or three weeks prior to these occurrences, that she  
22 was considering going back to Jamie?

23 A No.

24 Q The divorce became final about June 15,  
25 didn't it?

1 A Yes, I think that was about the time.

2 Q They were seeing each other frequently before

3 they were closing in on the date of the divorce?

4 A Yes.

5 Q Used to go to the Alley together sometimes?

6 A They would see each other over there.

7 Q Did that sometimes happen?

8 A Yes, but only once that I know of, though.

9 Q Do you remember the date?

10 A No.

11 Q Would you say that was during the time of the fair,

12 the summer, the music at the park, Pinto Bennett from the Alley

13 A Yes.

14 Q Would that have been the same night, or was it

15 that weekend?

16 A That same night.

17 Q Do you happen to remember what that date was?

18 A No.

19 Q Do you know when Fathers' Day was?

20 MR. ADAMSON: Objection, irrelevant and

21 it's beyond the scope of direct examination.

22 THE COURT: Sustained.

23 MR. BENNETT: My reason for asking about

24 that was somewhere around the 21st --

25 THE COURT: It was sustained.

1 Q Which time did you hear the more shots?  
2 A The first time.  
3 Q The first time that you heard shots?  
4 A Yes.  
5 Q Are you sure of that, or could you be confused?  
6 A I could be confused, but I'm almost positive  
7 it was the first time that I heard the more shots.  
8 Q Is there a possibility that the first time  
9 there was just the single shot, or maybe two, and the  
10 second time like eight or nine shots?  
11 A No. There had been -- I heard more shots than  
12 two.  
13 Q How much time would you think there was between  
14 the time you heard the shots, the first set, and the time  
15 you got out there?  
16 A About a minute.  
17 Q Could it even have been less?  
18 A Yes, it could have.  
19 Q The second time you waited some time before  
20 you went out?  
21 A Yes.  
22 Q Could it have been less than a minute on the  
23 first one, could it have been that the shots were fired  
24 and you were there on the scene within seconds?  
25 A No. It took me time to get out of bed.

1 Q You knew right away where your mother was?  
2 A Yes.  
3 Q Could you tell the shots were coming from that  
4 direction?  
5 A Yes, I could.  
6 Q The first time you went you didn't have the  
7 pistol with you?  
8 A The first time I did, I had the pistol.  
9 Q Do you ever remember any time within the week  
10 or two before this occurrence where you went to the Butte,  
11 your mother was working, and you saw Jamie there waiting  
12 for her to get off?  
13 A I seen him there, yes.  
14 Q Was that many times or just a few times?  
15 A I only seen him there once.  
16 Q Do you remember how soon, or how close to the  
17 time this other stuff happened that you could recall a date  
18 of approximately --  
19 A No, I couldn't.  
20 Q Would it have been in the month of June, after  
21 you were out of school?  
22 A I was out of school, yes.  
23 Q What time of that month did you get out of  
24 school, if you can remember, the day or --  
25 A The first.

1 Q Would you say it was closer to the 21st of that  
2 month, or closer to the first?

3 A Closer to the 21st.

4 Q Were there any specific things that happened,  
5 that you might be able to pin the date down exactly?

6 A No.

7 Q Special Breed Day was Thursday, would that  
8 help you recall what day of the week it was?

9 A No.

10 Q On Wednesday, approximately the 20th, did your  
11 mother have occasion to go to the Alley with your  
12 boyfriend?

13 A With my boyfriend? Yes, she did.

14 Q Was it on Wednesday the 20th?

15 A I don't know what date it was.

16 Q You don't know what date?

17 A No, I don't.

18 Q Did you get in a little argument with your  
19 mother about that incident?

20 MR. ADAMSON: Objection, beyond the scope  
21 of direct examination, and irrelevant.

22 THE COURT: What's the relevance, Mr.  
23 Bennett?

24 MR. BENNETT: I'm trying to pin down as  
25 to about that time -- that the defendant had been with

1 Marilyn for the several days before her death, and that --  
2 THE COURT: What relevance does that have to  
3 this question?  
4 MR. BENNETT: That Jamie was with her  
5 mother the first two or three days before her death --  
6 THE COURT: No, you indicated her boyfriend,  
7 this witness' boyfriend.  
8 MR. BENNETT: Well, to pin down the date  
9 and where her mother was, where she was, how Jamie would  
10 have known anything about it.  
11 THE COURT: Sustained, irrelevant.  
12 Q Are you aware of a bed being -- generally  
13 existing in the back of that station wagon?  
14 A A bed?  
15 Q Yes, a bed.  
16 A Yes.  
17 Q A sleeping place?  
18 A Yes.  
19 Q Were you aware that Jamie and your mother  
20 frequently would go various places and sleep in the car  
21 all night?  
22 A No, I wasn't.  
23 Q You were not aware of that?  
24 A No.  
25 Q Were you aware of it ever happening?

1 A Of what ever happening?  
2 Q Jamie and your mother sleeping in the back of  
3 that car on various occasions?  
4 MR. ADAMSON: Objection --  
5 A No.  
6 MR. ADAMSON: -- irrelevant.  
7 THE COURT: Overruled.  
8 Q Were you?  
9 A No, I was not.  
10 Q Were you aware of her ever having done that?  
11 MR. ADAMSON: Objection, asked and answered.  
12 THE COURT: Sustained.  
13 Q Did you know the purpose for her having the  
14 bed in the back of the car?  
15 A No, I didn't.  
16 Q Had you ever used it?  
17 A Yes, I had.  
18 Q Had your sister ever used it?  
19 A We had used it together, yes.  
20 Q For how long had that bed been more or less  
21 back there?  
22 A I don't know, for a couple of weeks.  
23 Q Just the last couple of weeks?  
24 A Yes.  
25 Q Do you recall any occasion where you and your



1 boyfriend and your sister were present when your mother  
2 came home early in the morning, you said, "Where have you  
3 been," her not answering, and either you or your sister  
4 saying, "You've been out with Jamie, haven't you?"

5 MR. ADAMSON: I don't know how she could  
6 possibly answer a question like that without some other  
7 foundation, or some other information being provided to  
8 her, and the question, the way it was presented, is  
9 irrelevant.

10 THE COURT: Sustained on lack of foundation.

11 Q Was there any occasion, within the week or  
12 two before your mother's death, where she had been out  
13 all night, and when she got home the three parties that  
14 I've just mentioned were there to see her?

15 A Myself and my little sister and my boyfriend,  
16 yes.

17 Q And on that occasion did one of you make a  
18 statement to her, "You've been out with Jamie," or some-  
19 thing like that, and she said --

20 MR. ADAMSON: Objection --

21 A Yes.

22 MR. ADAMSON: -- hearsay.

23 THE COURT: Overruled.

24 Q What was your answer? Was it yes?

25 A My little sister said something like that, yes.

1 MR. ADAMSON: Objection, asking for hearsay.  
2 THE COURT: Overruled.  
3 Q Did your mother acknowledge that she was with  
4 Jamie?  
5 A I don't know. I was in the bathtub when it  
6 happened.  
7 MR. BENNETT: That's all, your Honor.  
8 THE COURT: Mr. Adamson, re-direct.  
9  
10 RE-DIRECT EXAMINATION  
11 BY MR. ADAMSON:  
12 Q This conversation that Mr. Bennett has referred  
13 to, that was approximately when, when your mother came  
14 home, your sister, your boyfriend and you were present  
15 and there was a comment made, the specific instance that  
16 we're talking about, what was the date?  
17 A I don't know.  
18 Q Was it the week before her death, or before  
19 that?  
20 A It was before that.  
21 Q Was it before July 21?  
22 A July 21?  
23 Q June 21.  
24 A Yes, it was.  
25 Q So it was before she was allegedly kidnapped

1 and had the car stolen?

2 A Yes.

3 Q Do you know how much before that time?

4 A No, I don't.

5 Q More than two days?

6 A Yes.

7 Q More than three days?

8 A Yes.

9 Q What would have happened, Tiffie, if for some

10 reason you would have discovered that Mr. Charboneau was

11 living out in the outbuildings near the time of your

12 mother's death?

13 A What would we have done?

14 Q What would you have done?

15 A I would have called the police, because I

16 knew he was wanted.

17 Q What did he do?

18 A He kidnapped mother.

19 Q What would your mother have done if she had

20 known that?

21 A Called the police.

22 Q Why?

23 A Because she was scared of him.

24 MR. ADAMSON: No further questions.

25 MR. BENNETT: Nothing further of this witness.

# **EXHIBIT 2**

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
2 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

3 Magistrate Division

4 STATE OF IDAHO, )  
5 ) Case No. 1027 1028  
6 Plaintiff, )  
7 vs. )  
8 JAIMI DEAN CHARBONEAU, )  
9 Defendant. )

10 DATE: July 23, 1984

11 Time: 11:20 a.m.

12 Place: Magistrate Courtroom  
13 Jerome County Courthouse  
14 Jerome, Idaho

15 Before: HONORABLE ROGER S. BURDICK  
16 Magistrate

17 Appearances:

18 For the Plaintiff: Dannis M. Adamson  
19 Prosecuting Attorney  
Jerome County Courthouse  
Jerome, ID 83338

20 For the Defendant: Golden Bennett  
21 Attorney at Law  
22 Twin Falls, ID 83301  
23  
24  
25

1 MR. BENNETT: Well, I'd like to call two witnesses.  
2 One of them is not here yet, but we have -- we have --  
3 him on his way. It may be quite a while before he gets  
4 here. But in the meantime we have Tira, who is here and  
5 we would like to call Tira as a witness.  
6 COURT: Tira?  
7 MR. BENNETT: That's the younger sister of --  
8 COURT: What's her name, though?  
9 MR. BENNETT: Arbaugh.  
10 COURT: Okay. All right did you wish  
11 MR. BENNETT: It isn't Arbaugh, it's ...  
12 COURT: All right, at this point in time, the State  
13 has rested. You wish to call -- you can remove that cuff,  
14 only white cuffs are allowed in the Court. At this point  
15 in time you -- the State has rested. You wish no argument  
16 in that regard and you're calling your first witness.  
17 MR. BENNETT: Yes.  
18 COURT: All right. At this point in time, you may  
19 proceed, sir.  
20 MR. BENNETT: Tira Halman.  
21 TIRA HALMAN  
22 produced as a witness at the instance of the defense being  
23 first duly sworn, was examined and testified as follows:  
24 DIRECT EXAMINATION  
25 BY MR. BENNETT:

Colloquy

1 Q. What is your name.  
2 A. Tira.  
3 COURT: How do you spell that?  
4 A. T-I-R-A  
5 COURT: And what is your last name?  
6 A. It's Halman, but I go by Arbaugh.  
7 COURT: What is your given name, Halman?  
8 A. Uh huh.  
9 COURT: And how do you spell that?  
10 A. H-A-L-M-A-N  
11 COURT: M-A-N?  
12 A. Mm hm.  
13 COURT: Now you'll have to speak up loudly because  
14 this is being tape recorded. I'm sure you're nervous, but  
15 take a deep breath. Make sure that you say everything  
16 loudly enough. How old are you?  
17 A. 14.  
18 COURT: I'm going to ask a few questions as concerns  
19 the oath. Any objections by either party?  
20 MR. BENNETT: No objections at all.  
21 MR. ADAMSON: No objections.  
22 COURT: You are 14 years of age, is that correct.  
23 And as such, you are going to what school?  
24 A. Jerome High School.  
25 COURT: And as such you are a freshman or a sophomore?

Halman, Def, Court

1 A. Freshman.

2 COURT: And, do you attend any church or any other  
3 religious activities?

4 A. No.

5 COURT: All right, the only reason that I asked you  
6 this series of questions is, because you have taken an oath,  
7 to tell the truth. Do you understand what that oath says?

8 A. Yes.

9 COURT: All right, could you indicate to me what it  
10 means to you.

11 A. What it means to me?

12 COURT: Yes.

13 A. Well it means I'm not supposed to lie.

14 COURT: All right, do you understand that there are  
15 two sanctions which you have basically put yourself into  
16 and that is if you lie, you could be held accountable for  
17 perjury which is a criminal case against you and in addition,  
18 you have sworn to God or some Higher Authority that in fact  
19 you will tell the truth. Do you understand that?

20 A. Yes.

21 COURT: Okay, Do you know the difference between  
22 right and wrong in that regard?

23 A. Yes.

24 COURT: Do you feel that you understand the oath and  
25 the proceedings well enough to testify here today?

Halman, Def, Court



1           A. Yes.

2           COURT: All right, you may proceed, Mr. Bennett.

3                               DIRECT EXAMINATION

4 BY MR. BENNETT:

5           Q. I'm going to take you back in time to the day

6 that your mother was killed. And do you remember the

7 events of that day fairly clearly?

8           A. Yes.

9           Q. All right, let's start with even the night before.

10 For the first time you saw your mother the day before, which

11 would have been Saturday, the 30th or 31st of May, June,

12 July September -- what time did you last see your mother on

13 Saturday?

14           A. About 10:30.

15           Q. At night?

16           A. Yeah.

17           Q. And where was she going at that time?

18           A. To Twin.

19           Q. And what car did she leave in?

20           A. The Fiat -- no, she had the pickup. The red

21 and white pickup.

22           Q. Okay. And how do you know she was going to Twin?

23           A. 'Cause she told me.

24           Q. Okay, did she say who she was going to be with?

25           A. Yeah, she said she was going to be with her friends.

Halman, Def, Di

1 Q. Did she say who those friends were?  
2 A. Yeah. Chris Smart and --  
3 MR. BENNETT: What's the name?  
4 A. Chris Smart  
5 Q. Mort?  
6 A. Smart.  
7 Q. Oh, Chris Smart. Okay  
8 A. And Ray Broner and Pete Jones.  
9 Q. Do you know whether she actually was with Chris  
10 Smart? That night?  
11 A. Well, she was for a little while because she went  
12 by the Butte Cafe to ask her to go.  
13 Q. So Chris Smart, Ray Broner and --  
14 A. Pete Jones  
15 Q. Pete Jones. Okay, do you know Ray Broner?  
16 A. Yes.  
17 Q. Had you -- did you know him at that time?  
18 A. Yes.  
19 Q. And did you know Pete Jones?  
20 A. Yes.  
21 Q. At that time. And what time did she -- did you  
22 next see her?  
23 A. In the morning. About 10:30 in the morning. Or so.  
24 Q. Could it have been as late as 11:30?  
25 A. No, it wasn't as late as that.

Halman, Def, Di

1 Q. Why -- how do you know it wasn't as late as  
2 that?  
3 A. Because -- well, I just know it wasn't because  
4 I got up and looked at the clock.  
5 Q. Okay, do you remember what time it was when you  
6 first looked at the clock?  
7 A. Yeah, I think it was like 25 after or something  
8 like that.  
9 Q. After 10?  
10 A. Yeah.  
11 Q. And, is that when you first woke up?  
12 A. Yeah.  
13 Q. Okay. How much after you woke up did your mother --  
14 was it before your mother got home?  
15 A. Oh, she -- I didn't wake up til she was there.  
16 I don't know what time she got home. But she woke me up.  
17 Q. She woke you up? Okay. What next happened.  
18 In your life. What happened. What did you do after 10:30  
19 or whenever it was when your mother woke you up?  
20 A. Oh, she brought some Western Horseman magazines  
21 and we was looking at them.  
22 Q. And by we, do you mean --  
23 A. Me and my mon and Tiffany.  
24 Q. And Tiffany. Okay. How long did you look at  
25 those magazines?

Halman, Def, Di

1           A. Oh, not very long, cause she was running her bath  
2 water.  
3           Q. Who, your mother?  
4           A. Yeah.  
5           Q. Okay. Did you mother then take a bath?  
6           A. Yes.  
7           Q. And do you have any time it was when she got  
8 through taking her bath?  
9           A. No.  
10          Q. About how long did it take her to take the bath?  
11          A. Oh, about 15 minutes.  
12          Q. Okay, so that would be maybe, if you looked at  
13 the magazines maybe 15 minutes and then she took a bath  
14 maybe 15 minutes?  
15          A. Well, yeah. Well soon as she got out of the  
16 bathtub, I got in.  
17          Q. Okay, then it's your estimate that it would be  
18 around 11 o'clock?  
19          A. Yeah, probably around there.  
20          Q. Okay, and what did she next do or you next do  
21 or Tiffany next do?  
22          A. Well, then after she got out of the bathtub, I  
23 got in and she went outside to call my Grandma. Well, she  
24 got dressed and then went outside to call my Grandma.  
25          Q. Now you have to leave that house to make a phone

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1 call, don't you?

2 A. Yes.

3 Q. And do you know whether she actually got to call

4 your grandma or --

5 A. Yes, she did, she called Grandma.

6 Q. Are you sure it was Grandma she talked to?

7 A. No, she talked to Marlene.

8 Q. Marlene, wasn't it. Okay, and do you know what

9 time that was?

10 A. Not exactly, I was in the bathtub.

11 Q. All right, if your Grandma says it was 11:30,

12 does that sound okay to you?

13 A. Yeah, I guess.

14 Q. So what happened after she came in the house from

15 calling Grandma?

16 A. Well, she came in and said that the horses were

17 all in different corrals and she walked in the bathroom and

18 asked me if I had put them in different corrals for any

19 special reason. And I said no.

20 Q. The she didn't say the horses were out?

21 A. She said they were

22 Q. Just in different corrals

23 A. In the wrong corral.

24 Q. Okay, did she say which horses were in the wrong

25 corral?

1 A. Huh uh. Not to me.

2 Q. Did you ever learn later that day if the horses  
3 were in the wrong corral?

4 A. Well no, because when I went out there, I was  
5 too scared to go and check on the horses.

6 Q. Okay, but do you know whether you mother changed  
7 the position of the horses or --

8 A. I'm not sure.

9 Q. What was you mother's responsibility with regard  
10 to those horses? Do you know?

11 A. I don't understand.

12 Q. Well was she taking care of those horses for the  
13 owner or were they her own horses?

14 A. They were her own horses.

15 Q. Okay, how many horses did your mother have?

16 A. Four.

17 Q. And these were her own horses that she was  
18 talking about that were in the wrong corral?

19 A. Right. Ours. Mine, Tiffy's and hers.

20 Q. Okay, did you mother tell you that Jaimi was  
21 staying out in the barn?

22 A. Oh, no.

23 Q. Did you know if Jaimi was staying out there?

24 A. No.

25 Q. Do you know whether or not Jaimi had been there

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1 the day or two before that?

2 A. No, sir.

3 Q. Did you ever go out to the barn to look?

4 A. No.

5 Q. When was the last time you'd looked in the tack

6 room?

7 A. Well, I don't just go to the tackroom. I usually

8 just walk right past it.

9 Q. Okay, so it's possible he could have been there

10 since Thursday and you wouldn't have known about it necessarily?

11 A. Yes.

12 Q. Do you know where that chaise lounge that was in

13 the tackroom the day -- on the 1st of July, do you know how

14 long that had been there?

15 A. The what?

16 Q. Well that lounge chair.

17 A. I never did saw it.

18 Q. Didn't you even see it Sunday?

19 A. No.

20 Q. Okay. Have you ever seen that chair in that

21 tackroom?

22 A. I never seen the chair. I didn't go out there

23 when they went out there.

24 Q. Did you know about a snowmobile suit that was in

25 that tackroom?

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1 A. Yes, they told me about the snowmobile suit.  
2 Q. Who told you?  
3 A. Bart and Tiffy and Jim and Rhonda.  
4 Q. What did they tell you?  
5 A. They said that they had found a snowmobile suit  
6 out there.  
7 Q. When did they find it?  
8 A. I don't remember which date it was.  
9 Q. When did they tell you?  
10 A. I don't remember.  
11 Q. How did that snowmobile suit and the red jacket,  
12 was it, was it a red jacket?  
13 A. Orange jacket.  
14 Q. Orange jacket. How did they get from the  
15 tackroom back into your house?  
16 A. How did they get from the tackroom into our  
17 house?  
18 Q. Well, back into your house?  
19 A. I don't understand.  
20 Q. Well, do you recall that they were there.  
21 A. I was told that they were in the tackroom.  
22 Q. Okay and then did you think that they just stayed  
23 in the tackroom then?  
24 A. Yeah, I thought -- or the police took them because  
25 I had to go down and identify them in Larry's office.

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1 Q. Okay, Larry Webb's office?  
2 A. Yeah.  
3 Q. So, so far as you know, the police took the  
4 snowmobile and the jacket -- am I identifying that right?  
5 Is it a snowmobile --  
6 A. Suit.  
7 Q. Coveralls?  
8 A. Yeah. The zip up.  
9 Q. Cover the arms and legs and everything.  
10 Do you know why that snowmobile deal was out there?  
11 A. I don't know unless it was for him to stay  
12 warm at night or something.  
13 Q. Okay, do you know who took them out there?  
14 A. No, I don't.  
15 Q. Do you know how many days they were out there?  
16 A. No, sir.  
17 Q. Okay, and so far as you know is the jacket and  
18 the snowmobile outfit taken the same time?  
19 A. I don't -- I didn't know that jacket -- that  
20 orange jacket. I never seen it before.  
21 Q. I see. Were you able to identify the snowmobile  
22 outfit?  
23 A. Yes.  
24 Q. Who did that belong to?  
25 A. My mom.

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1 Q. Your mother?  
2 A. Yes.  
3 Q. Did you ever ask your mother if she took it out  
4 there?  
5 A. No, she was dead.  
6 Q. Okay, but I mean, you knew they were out there  
7 even before your mother died though, didn't you?  
8 A. No.  
9 Q. Okay, you heard about them first after she was  
10 dead?  
11 A. Yes.  
12 Q. Okay, did you hear anything about a peanut butter  
13 jar.  
14 A. Yeah they said that they found a jar of peanut  
15 butter out there.  
16 Q. Do you know who found it?  
17 A. No, I really don't.  
18 Q. You heard it was found. You didn't know anything  
19 about it?  
20 A. Right.  
21 Q. Okay, Did you hear anything about a Koolaid  
22 pitcher or container of --  
23 A. Of water.  
24 Q. Well, either water or Koolaid?  
25 A. Yeah, they said that the Mexicans out on the

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1 ranch had found water and a radio out there.

2 Q. And a radio?

3 A. Yes.

4 Q. Did those -- did you ever identify those items?

5 A. No.

6 Q. Did you hear anything about any paper, that is

7 A. Gum wrappers?

8 Q. Gum wrappers?

9 A. Yes.

10 Q. Okay, what did you hear about those?

11 A. That they were scattered out around where he had

12 the crates set up.

13 Q. Where he had the what set up? ?

14 A. Crates.

15 Q. Crate?

16 A. Crates.

17 Q. What are crates?

18 A. Wooden crates.

19 Q. Little wooden boxes?

20 A. Yes.

21 Q. And what had he had set up?

22 A. The crates.

23 Q. Okay, set up in what fashion, do you know?

24 A. Kind of like a you know, place to -- I don't

25 know, They were spread out there more cause we spread them

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1 out there in the barn, but I never got to see how they  
2 were shaped or anything, but they told me that they were  
3 all pushed up kind of forming like a , kinda like --

4 Q. A little cupboard?

5 A. Well, you know, kind of like a fort or something.

6 Q. Okay, and did you hear anything about any bread  
7 wrappers or any remaining bread in bread wrapper or any  
8 cheeseburger or hamburger wrapper?

9 MR. ADAMSON: Your Honor, I'm going to object at  
10 this time. First of all it's a compound question. Second  
11 of all, it's apparent that this witness is only familiar  
12 with these ongoing questions Mr. Bennett is presenting to  
13 her through hearsay. Not through knowledge and it would  
14 seem to me that Mr. Bennett may want to call a different  
15 witness. We're going to object as to the hearsay nature  
16 of these questions.

17 MR. BENNETT: Well, Your Honor, I'm not offering this  
18 for the truth of what was said, but the fact that it was  
19 said. Now, obviously, this person doesn't know the truth  
20 of whether these items were there or not because she wasn't  
21 there. But she was there at a later time and was told by  
22 the Police some things and was told by her sister some  
23 things I suppose and obviously, some by her sister's boyfriend.

24 COURT: What is the relevance that these things  
25 were said.

1 MR. BENNETT: The fact that these things were said  
2 may lead us to call certain other witnesses to determine  
3 the truth of the matter.

4 COURT: Sustained on hearsay and (unintelligible) a  
5 compound question.

6 MR. BENNETT: All right.

7 DIRECT CONTINUED

8 BY MR. BENNETT:

9 Q. I will go into a different area.

10 COURT: Thank you.

11 Q. When, assuming that it was 11:30, when your  
12 mother called your aunt, did your aunt live with your  
13 mother? I mean, shoot me, did your aunt live with your  
14 grandmother?

15 A. Yes, sir.

16 Q. Okay and what happened -- what's the next thing  
17 that happened after your mother called or came back from the  
18 -- from where she made the phone call?

19 A. Could you repeat that?

20 Q. Okay, I think you'd already said that she'd said  
21 something about the animals were in the wrong part of the  
22 barn and she went out.

23 A. Yes, sir.

24 Q. What's the next thing that happened after that?

25 A. Well, she said that she was going to go out and

1 take care of them, because Tiffy was still in her pajamas  
2 and I was in the bathtub.

3 Q. Okay, and did your mother come back?

4 A. No.

5 Q. Okay, then what is the next thing that happened  
6 then after she went out to the barn?

7 A. I was reading a Western Horseman book in the  
8 bathtub and I heard someone yell, but my mom was out clear,  
9 you know, working the horses and I didn't think very much  
10 of it. And I heard Tif jump out of bed --

11 Q. What did you hear your mother yell?

12 A. I never heard her. I never heard her say  
13 anything. I just heard her yell.

14 Q. Okay, and it wasn't particularly unusual?

15 A. No, because when your working horses, you  
16 usually yell.

17 Q. All right, what else did you hear?

18 A. Well, I just heard Tif shuffling around\_in --  
19 in Mom's bedroom cause she was reading

20 Q. She was reading?

21 A. Yeah on Mom's bed and she jumped off the bed.  
22 The bed's really high.

23 Q. Okay. And what did she do?

24 A. Well, then I guess she must of run outside and  
25 because I was just in the house all by meself.

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1 Q. Did you hear any shots?

2 MR. ADAMSON: I object, Your Honor. That's leading.

3 COURT: Sustained.

4 DIRECT CONTINUED

5 BY MR. BENNETT:

6 Q. What did you hear if anything?

7 A. I don't quite remember hearing any of the first  
8 shots.

9 Q. Then what is the next thing that happened?

10 After Tiffany went running outside? Did Tiffany run outside  
11 or did she walk outside or --

12 A. She must of run outside because I could hear her--  
13 floors kind of hollow sounding. I could hear hustling around  
14 stuff.

15 Q. Do you know whether or not she had her mother's  
16 gun?

17 A. At that time no, but she did when we went back  
18 out.

19 MR. ADAMSOM: I'd object, Your Honor, and ask that  
20 that be stricken as a leading question.

21 COURT: Overruled. Answer will stand.

22 DIRECT CONTINUED

23 BY MR. BENNETT:

24 Q. Then how long was your sister outside before you  
25 saw her again?

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1           A. Well, I don't know -- I really don't -- things  
2 were going so fast that I don't remember.

3           Q. You were still in the bathtub at this time?

4           A. Yeah.

5           Q. And so you could only hear. You couldn't see  
6 anything.

7           A. Right.

8           Q. What is the next thing you did see?

9           A. Tiffany came back in the house and opened up  
10 the bathroom door and told me that --

11          Q. What did she tell you?

12          A. She said that Mom was outside with Jaimi and  
13 that she was shot and she told me to get out of the bathtub  
14 and to hurry. And she walked off away from the door real  
15 fast and I couldn't see her anymore.

16          Q. And then what next happened?

17          A. Well then I got out of the bathtub and I -- I  
18 couldn't really find a towel and so I went in and I couldn't  
19 find any of my pants very fast so I put on a pair of Bart's.  
20 And I -- and a t-shirt and some thongs.

21          Q. And where was Tiffany at this time?

22          A. She was in the house with me. Yeah. She was in  
23 the house. But we went outside, back outside together.

24          Q. Where did you go when you went back outside?

25          A. We went out behind the sheep wagon.

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1 Q. And why did you go there?

2 A. Because we didn't want to get out in the open or

3 anything because we didn't know if he was going to shoot

4 us either. Us to or anything like -- we just was scared.

5 Q. Did you hear anything.

6 A. Kinda I heard some rattling in the barn but, --

7 yeah, just some rattling in the barn. Me and Tif was kina

8 talking to each other and we was yelling to Mom. But she

9 never answered.

10 Q. Do you know what time it was by the time you did

11 these things?

12 A. No.

13 Q. Do you know anything about anyone calling the

14 police?

15 A. Yes, Tiffy called the police before she came in

16 to get me.

17 Q. How do you know. Did you hear her calling them?

18 A. Huh?

19 Q. Did you hear her?

20 A. When she came in she said she had called. While

21 I was putting on some clothes.

22 Q. And of course you couldn't hear the call because

23 they were in another building.

24 A. Yes.

25 Q. And -- but you -- you say she called before she

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1 got you out of the bathtub? You say she called before  
2 she got you out of the bathtub?

3 A. Yes.

4 Q. And, do you know how much time there was between  
5 the time you got -- you first heard from Tiffany that your  
6 mother had been with Jaimi and the time you went out behind  
7 the sheep camp?

8 A. Oh, must have been at least two minutes or so  
9 before we went out behind the sheep trailer.

10 Q. What happened, if anything, behind the sheep  
11 trailer?

12 A. Well, then we only stayed there for a second. And  
13 we went back in and I changed clothes again because I couldn't  
14 you know, I had on Bart's pants, and so I went and put on a  
15 pair of my pants. And then we went back out behind the  
16 sheep trailer. That's why I was changing clothes. That's  
17 when we heard the other shots.

18 Q. Okay, you'd already been behind the sheep trailer

19 A. Then we went back.

20 Q. Already gone back to the house and then you're  
21 back behind the sheep trailer and then you heard some shots?

22 A. No, we heard the shots before we were behind the  
23 sheep trailer the second time. While I was changing clothes,  
24 and Tif was hiding the keys.

25 Q. Tif was hiding the keys. How do you know she was

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1 hiding the keys?

2 A. Cause we were talking about it.

3 Q. Did she tell you why she was hiding the keys?

4 A. Yes.

5 Q. Why?

6 A. Because he said he was going to take her to the

7 hospital and she didn't want him to leave and take Mom

8 because he didn't know -- she didn't know what he was going

9 to do so she hid the keys.

10 Q. So when you went behind the sheep trailer the

11 second time, withdraw that.

12 Did you hear -- did Tiffany ever explode a round of

13 ammunition in the gun, when you were there?

14 A. Did she ever what?

15 Q. Did she ever explode a round of ammunition in the--

16 did she fire the gun?

17 A. Exploding a round?

18 Q. Right. Did she fire the gun?

19 A. Yes, sir, once.

20 Q. Could you tell us about that?

21 A. It was a little while after the second time we

22 went over there. And I was standing on the trailer behind

23 her and she had the gun kind of behind her back like this

24 and she was shaking really bad, cause I could see her shaking

25 and everything and my dog was standing right beside me and

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1 the gun went off. I didn't see how she did it or anything,  
2 but it was only like about this far away from me. I mean  
3 I was behind her.

4 Q. And did you see the shell?

5 A. No, I wasn't paying any attention to that.

6 Q. When did you next see that shell?

7 A. I never did see it.

8 Q. Do you know when the police first saw that shell?

9 A. No, sir.

10 Q. Do you know whether Tiffany told the police that  
11 day that she fired the gun that day?

12 A. I'm not sure.

13 Q. Do you know when the overalls, the snowmobile suit,  
14 was taken from the -- from the tackroom.

15 A. No, sir. I don't know.

16 Q. Do you know who took it from the tackroom?

17 A. From the tackroom?

18 Q. Yeah, took it from the tackroom.

19 A. I'm not sure. It was either a policeman or Tif  
20 or Bart.

21 Q. Was Bart there when all this was happening?

22 A. When Mom was getting shot?

23 Q. Yeah.

24 A. No, sir.

25 Q. When did Bart show up?

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1           A. He didn't show up until we came to the Courthouse  
2 to write our report.  
3           Q. Well, was Bart there that Sunday at all?  
4           A. No.  
5           Q. Where was Bart that Sunday?  
6           A. He was working.  
7           Q. What time had he left the house?  
8           A. Had Bart left the house?  
9           Q. Uh huh.  
10          A. That morning?  
11          Q. Yes.  
12          A. Sunday morning? Oh it must of been around 5:30,  
13 6 o'clock.  
14          Q. Had he slept there there at your house that night?  
15          A. Yes, sir.  
16          Q. Okay, when you referred to the reason for taking  
17 the snowmobile suit out, you said to keep him warm? Who did  
18 you mean by him. Did you mean Jaimi?  
19          A. Yes, sir.  
20          Q. And when you said he moved the crates around and  
21 so forth, sort of like a fort, and you referred to he. Was  
22 that Jaimi also?  
23          A. Yes, sir.  
24          Q. Okay, now how did you know these things?  
25          A. How did I know that Jaimi had done that?

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1 Q. Yeah.

2 MR. ADAMSON: I object, Your Honor, the -- any  
3 question that she could possibly answer would be hearsay.  
4 Because I think it's clearly been established that she  
5 doesn't know. That she heard all of this information from  
6 other individuals.

7 COURT: Well, where she found it is not hearsay.  
8 Where she found the (unintelligible) who made the statement  
9 to her. It's overruled. You may answer. How did you find  
10 that out?

11 DIRECT CONTINUED

12 BY MR. BENNETT:

13 Q. Where did you get this information from?

14 A. From -- well the next day I had to come in and  
15 identify some stuff and I heard it from the policemen that  
16 were out there and Tiff and Bart and Jim and Rhonda.

17 Q. Who and Rhonda?

18 A. Jim and Rhonda.

19 Q. Who are Jim and Rhonda?

20 A. They're my aunt and uncle. They went out there  
21 with Tif and Bart.

22 Q. They went out when?

23 A. They went out with Tif and Bart to pack our stuff.

24 Q. What day did they do that?

25 A. I'm not quite sure.

1 Q. Do you remember Saturday at about 8 o'clock, what  
2 you and your mother were doing?

3 A. Yeah. She had come home from work and we went  
4 over to the Butte Cafe to eat supper.

5 Q. Did you have a cheeseburger?

6 A. Yes.

7 Q. And did your mother bring back any food. Did  
8 either you or your mother bring back any food back from  
9 the cafe for someone.

10 A. Yes.

11 Q. Who did she bring the food for?

12 A. She brought it for me to eat later on that night.  
13 Cause I was home alone.

14 Q. Do you know what she did with that food?

15 A. Yeah, she set it on the wood block, the wood,  
16 the wood blcok, yeah.

17 Q. Do you know whether she took it out to Jaimi or  
18 not?

19 A. She never took it out to Jaimi because it was on  
20 our wood block. And I ate it that night when Tif and Bart  
21 were home.

22 Q. Do you know whether she had some other food besides  
23 that? That you ate?

24 A. That I ate, besides that? No, but that's all  
25 she brought was that cheeseburger and a little sack.

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1 Q. Okay, do you know what was in the little sack?  
2 A. Yeah, it was the cheeseburger.  
3 Q. Oh  
4 A. It was just a half a cheeseburger.  
5 Q. I thought you said cheeseburger and a little sack.  
6 Did you see her go out to the barn that night after you  
7 came back from the -- from the Butte Cafe?  
8 A. She -- no because I watched her go. I watched  
9 her leave. And she did not go out to the barn.  
10 Q. Now, she didn't leave till about 11 o'clock right?  
11 A. No, she left before 10:30. Around 10:30.  
12 Q. And you came back from the Butte Cafe about what  
13 time?  
14 A. About 10.  
15 Q. Okay, during that half hour, are you sure -- do  
16 you know for sure whether or not she went out to the barn?  
17 A. Yes. She did not go out to the barn.  
18 Q. You didn't see her go out to the barn.  
19 A. I was with her during that whole period of time  
20 and she did not.  
21 Q. The next morning, Saturday, -- I mean the next  
22 morning, -- had you seen your mother -- do you know whether  
23 or not your mother went out to the barn Thursday morning or  
24 Thursday night? Thursday morning before she went to work  
25 and Thursday night after she got back from work?

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1 A. Thursday morning?

2 Q. Mm hm.

3 MR. ADAMSON: Your Honor, I'm going to have to object.  
4 to foundation, because I believe that the witness is confused  
5 I don't think that she knows which Thursday that he's referring  
6 to.

7 COURT: All right.

8 MR. BENNETT: I'll withdraw that question and ask  
9 another.

10 DIRECT CONTINUED

11 BY MR. BENNETT:

12 Q. The day you've just been testifying about, that  
13 you got the cheeseburger, was Saturday night. Is that  
14 correct?

15 A. Evening, yes.

16 Q. Okay, now the day before that, Thursday, did your  
17 mother work?

18 A. Yes, she did.

19 Q. Okay, did she work the same shift?

20 A. She worked from 10 oh, 10 to -- well it was,  
21 shoot, let me think -- she worked a different shift  
22 Thursday. She --

23 Q. But she started at the same time but got off a  
24 little bit earlier? Or later?

25 MR. ADAMSON: Object, Your Honor, that's leading.

1 BENNETT: I don't believe that's leading.

2 COURT: It's overruled.

3 DIRECT CONTINUED

4 BY MR. BENNETT:

5 Q. Do you remember?

6 A. I don't remember.

7 Q. Okay, well regardless of what time she got off  
8 work, did she come home that night?

9 A. Yes, sir.

10 Q. And from the time she came home until she went  
11 to bed, did she go to bed there that night?

12 A. Yes, sir because I wasn't home. I stayed the  
13 night with a friend. She got my note which I had left for  
14 her that night. And called me in the morning.

15 Q. You know she came at least for some time, but  
16 you don't know whether she stayed there all night?

17 A. Yes, sir.

18 Q. So you don't know whether or not she went out  
19 to the bar that night?

20 A. No, sir, I don't.

21 Q. What about that morning? Thursday before she  
22 went to work? Did she go out to the barn that morning?

23 A. I don't remember sir.

24 Q. You don't remember.

25 A. No, sir.

1 Q. Okay. Did you just graduate from Jr. High?  
2 A. Yes.  
3 Q. This spring. And did your mother ever talk  
4 about what she was going to get you for a present?  
5 A. Yes, sir. .  
6 Q. What was she going to get you?  
7 A. A hope chest.  
8 Q. Did she ever talk about a saddle?  
9 A. At a time she did because I needed a new saddle.  
10 Q. Did you ever talk about a .22 rifle?  
11 A. No, sir.  
12 Q. Did your sister have a .22 rifle?  
13 A. Yes, sir.  
14 Q. Did you have one?  
15 A. No, sir.  
16 Q. Have you ever fired your sister's?  
17 A. Yes, sir.  
18 Q. And were you desirous of having a .22 rifle?  
19 A. Well, in a way, yes.  
20 Q. And had you ever told Jaimi that you wanted one?  
21 A. I could have earlier, that's when we was living  
22 in Shoshone, but I don't remember it recently.  
23 Q. Had you ever gone to that firing range that's  
24 just a little ways from your home there?  
25 A. Yes, sir.  
Q. Had you ever used your sister's rifle at that

1 firing range?

2 A. Yes, sir.

3 Q. Had you ever been there with Jaimi?

4 A. No, sir.

5 Q. Did Jaimi know that you'd been there?

6 A. I don't think so.

7 Q. Did your mother know that you'd been there?

8 Did you ever go there with your mother?

9 A. Yes, sir.

10 Q. Did your mother know that you wanted a rifle?

11 A. Well, I wanted one because Tif -- she had one,

12 but I never ever asked for one.

13 Q. Would there have been anything recent that you

14 know of that Jaimi would have known that you wanted a rifle?

15 A. Only that because when we was in Shoshone we used

16 to rabbit hunt and stuff, but other than that I don't think

17 so.

18 Q. Well, do you like Jaimi? Did you like Jaimi?

19 A. Yes, sir.

20 Q. And did you and Jaimi always get along?

21 A. Most of the time.

22 Q. Did your sister get along as well with Jaimi as

23 you did?

24 A. No.

25 Q. Is there any particular reason why that you know

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1 of?

2 A. No, sir. Only because maybe he was hitting Mom  
3 and stuff, but that's probably why cause he's younger than  
4 her.

5 Q. Tiffany -- I'm sorry I didn't hear that?

6 A. Maybe because he's hit Mom previous times and  
7 because he's younger than her. You know. I don't know  
8 why that was her feelings..

9 Q. Did your mother sometimes carry a pistol in her  
10 purse? A .22 automatic?

11 A. In her backpack.

12 Q. She carried it in her backpack?

13 A. Yes, sir.

14 Q. She almost always carried it in her backpack,  
15 didn't she?

16 A. Oh, lately she's been keeping it on the bed.

17 Q. Prior to her losing her car, where did she keep  
18 her gun?

19 A. I think she kept in on her bedstand cause --  
20 yeah -- that's what it was the morning that it happened  
21 cause Tiffany picked it up off the bedstand cause I even  
22 remember seeing it there that morning. It was on the bedstand.

23 Q. Which morning are you saying. The morning that  
24 what happened. The morning that the murder happened?

25 A. Yes..

1 Q. You saw it on the edge of her bed that day?  
2 A. I saw it. Definately saw it that day.  
3 Q. Now, did you Tiffany say that she got it out  
4 of her mother's purse?  
5 A. No.  
6 Q. When was the last time that you knew that gun  
7 was in the backpack?  
8 A. The last time I positively knew?  
9 Q. Uh huh.  
10 A. Well, the last time I positively knew was when  
11 we went up to Fish Creek and that was a while back.  
12 Q. Do you know about what the date was?  
13 A. No. We went up there with Valerie and Bart and  
14 Mike. It was -- oh, I don't know.  
15 Q. Do you know that when your mother was divorced  
16 from Jaimi.?  
17 A. Yeah, I think it was the 13th.  
18 Q. Or the fifteenth. Somewhere around there?  
19 A. Yeah, somewhere around there.  
20 Q. Okay at the time you went fishing, that you knew  
21 the gun was there, was it after the divorce or before?  
22 A. It was before.  
23 Q. Okay, did you ever know of a specific occation  
24 that the gun was in the backpack after the divorce.  
25 A. No, sir. I don't.

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1 Q. Do you if Jaimi visiting with -- do you know  
2 Chris?

3 A. Yes.

4 Q. Do you know about the occasion where Jaimi went  
5 out to Chris' place and shoed some of her horses?

6 MR. ADAMSON: I object, Your Honor, that's a leading  
7 question.

8 MR. BENNETT; I asked if she knew of that occasion.

9 COURT: It's overruled.

10 DIRECT CONTINUED

11 BY MR. BENNETT:

12 Q. Do you?

13 A. I'm not sure. It seems like I might have heard  
14 it but I don't know. Positively, I don't.

15 Q. The night that you told us before that -- or you  
16 told us that she went in to meet with Ray Broner and so  
17 forth, the Saturday night before the shooting, is that  
18 correct?

19 A. Yes.

20 Q. When is the last time that you know of, that she  
21 went to the Alley before that?

22 A. Oh, Jeez, I don't know. I don't positively know.

23 Q. Did your mother ever tell you that she was -- had  
24 been raped?

25 A. Yes.

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1 Q. When did she first tell you that?

2 A. The morning after. I don't know the specific  
3 date. When we went to pick her up from her friends' in  
4 Wendell.

5 Q. Do you know where her backpack was at that time?

6 A. I think it was in the car cause -- yeah, it was  
7 in the car.

8 Q. And do you know where, the day before that  
9 happened, where the backpack was?

10 A. We had taken the car up to State Rodeo the night  
11 before -- well that night, as a matter of fact, that Mom  
12 was raped, and she took -- or keeps her backpack... mostly  
13 with her but, Tiffy and I had taken back the car to her and  
14 she put all of her stuff in there that she takes home like  
15 some clothes and -- and her backpack and things like that.

16 Q. Okay then the day before this happened, when she  
17 had her backpack, was the gun in the backpack then?

18 MR. ADAMSON: Object, Your Honor, lack of foundation.  
19 I -- I'm confused as to which day he's talking about and I'm  
20 sure the witness is too.

21 MR. BENNETT: She's saying the day before, she claimed  
22 to -- she reported that she was raped, they had gone to this  
23 certain place with a -- your mother had the backpack, and I'm  
24 trying to find out if on that day, the gun was in the  
25 backpack.



1 A. No,sir it wasn't.

2 COURT: The answer is it was not.

3 MR. BENNETT: Well, how do you know that?

4 A. Because it was on her bed. It was not in her  
5 backpack.

6 Q. You said it was on her bed the morning that she  
7 was shot.

8 A. Yes, and it was on her bed that morning too.  
9 Behind the radio.

10 Q. Would you know of any reason why Jaimi would have  
11 occasion to rape your mother?

12 A. No, sir.

13 Q. They always got along pretty well sexually, didn't  
14 they.

15 MR. ADAMSON: I'd object, Your Honor. It's leading.

16 DIRECT CONTINUED

17 BY MR. BENNETT:

18 Q. All right. Do you whether.

19 COURT: It may be outside the scope of this witness's  
20 knowledge. You may go to another subject, Mr. Bennett.

21 DIRECT CONTINUED

22 BY MR. BENNETT:

23 Q. Did you know of any occasions of when your mother  
24 and Jaimi, after they separated, and even after they divorced,  
25 would go to various places together at night?

1 MR. ADAMSON: I object, Your Honor. That is leading.

2 MR. BEENETT: Do you know of any, is what I said.

3 COURT: Overruled.

4 DIRECT CONTINUED

5 BY MR. BENNETT:

6 A. Could you please repeat the question?

7 Q. Do you know of any times that Jaimi took your  
8 mother out on a date, where they stayed all night, after  
9 they separated and even after the divorce?

10 A. I know that they had been together one night, but  
11 I don't know if she had stayed all night with him.

12 Q. But she had been with him?

13 A. Yeah, at the Fred Bennett concert.

14 Q. Did you learn that from her or from Jaimi?

15 A. From her and Jaimi.

16 Q. Okay, did you at one time or another accuse your  
17 mother, you're going out with Jaimi still, aren't you, or  
18 something like that?

19 MR. ADAMSON: Object, Your Honor, that's leading.

20 COURT: It's overruled.

21 DIRECT CONTINUED.

22 BY MR. BENNETT:

23 A. No. I didn't -- I didn't hate Jaimi and I  
24 wasn't too worried if she did get back with him really. And  
25 I don't -- no I never really said, you're going out with

1 Jaimi. I never really got mad at her for it but Tiffy  
2 was kinda upset about it.

3 Q. Did you hear anything from your mother or from  
4 Jaimi or from both that there was some consideration of  
5 recon -- getting back together?

6 A. No. Not really. I mean, not -- not -- my Mom  
7 never said me and Jaimi's getting back together. She never  
8 really even had thoughts of getting back together. She wanted  
9 to remain friends. And Jaimi never ever said he -- he men-  
10 tioned to me once that he still loved her. That he wanted  
11 to be back with her but -- I don't know. She never really  
12 said that she wanted to get back together with him.

13 Q. Did you mother ever say to you whether she still  
14 loved Jaimi or not?

15 A. She said that she would never love anybody like  
16 she loved him. And we talked about things like this all the  
17 time. And that she would never quit loving him but she had  
18 to quit loving him.

19 Q. Did she say why she had to quit loving him?

20 A. Because she thought that he would just always  
21 be, you know, trouble to us and stuff.

22 Q. Was Jaimi a jealous person?

23 A. Yes, sir.

24 Q. Was your mother a jealous person?

25 A. Well, not really, not --

1 quarrel quite a bit about jealousy?

2 A. Yes, sir.

3 Q. Who seemed to be the fault of those quarrels, in

4 your -- your opinion?

5 A. Who was the one that started the fights?

6 Q. Well, if you know what some of the fights started

7 over, yes.

8 A. Well, he was the jealous one. I mean -- sh --

9 he was just jealous over friends and stuff like that but

10 they never really -- he never really had any reason to be

11 jealous. He was the one that always started the quarrels

12 basically.

13 Q. Did you ever see him hit your mother.?

14 A. I've seen him push her and hold her up against

15 the wall and like that. But I've never seen her -- seen

16 him flat out punch her or anything like that.

17 Q. Have you ever seen her hit him?

18 A. No.

19 Q. Was your mother fairly strong, was she?

20 A. She was fairly strong, yes.

21 Q. Was she as strong as Jaimi?

22 A. No.

23 Q. Were you there when your mother shot Jaimi?

24 A. Yes, sir.

25 MR. ADAMSON: I object, Your Honor. It -- this line

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1 of questionning is irrelevant.

2 COURT: Sustained.

3 DIRECT CONTINUED

4 BY MR. BENNETT:

5 Q. The gun that Tiffiny carried, the day your mother  
6 was shot, is that the same gun that she used to carry in  
7 her backpack?

8 A. Yes, sir.

9 Q. And is that the same gun that she had used to  
10 shoot Jaimi with before.

11 MR. ADAMSON: Object, Your Honor.

12 COURT: Sustained. Mr. Bennett, I've told you this line of  
13 questioning is irrelevant and I don't want to hear it again.

14 MR. BENNETT: Very well.

15 DIRECT CONTINUED

16 BY MR. BENNETT:

17 Q. That's all the questions I have.

18 COURT: Re-direct? Or cross examination? Excuse me.

19 CROSS EXAMINATION

20 BY MR. ADAMSON:

21 Q. Tira, when you went over to pick your mother up  
22 in Wendell on June 22nd after she had allegedly been kidnapped  
23 and raped and the car stoken, did she tell you what had  
24 happened?

25 A. She told me what had happened but she wouldn't go

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1 into detail.

2 Q. Okay, and what was her state of mind when you

3 first picked her up?

4 A. I don't understand what state of mind means.

5 Q. Was she crying?

6 A. Yeah, a little bit.

7 Q. And do you remember what time it was when you

8 got over to Wendell to pick her up on that day?

9 A. No, sir, I don't.

10 Q. Was it after lunch?

11 A. No, I think it was -- it wasn't after lunch cause

12 I was in the bathtub again.

13 Q. On that day, also?

14 A. Yes, when (Unintelligible) came over and told us.

15 Q. Okay, so it was sometime after lunch?

16 A. Yeah, I guess it was.

17 Q. Was it a long time after lunch or just shortly

18 after lunch?

19 A. Just shortly after lunch.

20 Q. Okay. had your mother been crying?

21 A. Yeah.

22 Q. Okay, and what did she have on when you picked her

23 up?

24 A. A pair of black shorts and a brown western shirt.

25 Q. Okay, was it brown or was it blue?

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1 A. Oh, yeah, it was her blue one with brown kind of.  
2 Q. Okay, what did she tell you had happened to her?  
3 A. She told me that she had been choked and--  
4 Q. When did she say she had been choked?  
5 A. Shortly after work.  
6 Q. Where did she work at?  
7 A. The Butte Store.  
8 Q. And what else had happened?  
9 A. And then she said she passed out and when she  
10 woke up she was -- they were somewhere between Jerome and  
11 Richfield.  
12 Q. Okay and then did she say what happened after  
13 that?  
14 A. Well, she said that they had been to the desert  
15 and stayed at the desert all night.  
16 Q. Did she indicate whether or not she had been raped  
17 in the desert?  
18 A. Yes, sir --  
19 Q. And did she indicate who had raped her in the  
20 desert?  
21 A. Yes, sir.  
22 Q. Who was that?  
23 A. Jaimi.  
24 Q. And did she indicate she was taken against her  
25 will?

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1 A. Yes, sir.

2 Q. And did she indicate who was driving the vehicle?

3 A. Yes, sir.

4 Q. And who was driving the vehicle?

5 A. Jaimi.

6 Q. And did Jaimi ever let her drive the vehicle?

7 A. No, sir.

8 Q. And did she say it was Jaimi that had gotten hold

9 of her and choked her at the Butte Store?

10 A. Yes, sir.

11 Q. And did she indicate that she had ever gotten

12 the car back?

13 A. No, sir.

14 Q. And did she tell you what had happened to the car?

15 A. Well, she said that he had taken it.

16 Q. Okay, Did she indicated that that's what she had

17 wanted had happened to her?

18 A. Oh, no.

19 Q. What did she indicate to you?

20 A. That she wanted to be raped? Did she indicate that

21 she wanted to be raped?

22 Q. No, did she indicate that she wanted to be with

23 Jaimi that night?

24 A. No, I don't -- she never said whether she planned

25 to be with him or not.

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1 Q. Okay, did it sound to you like she had been --  
2 that she had been held against her will?

3 A. Yes, sir because she said that he had asked her to  
4 go to Shoshone with her before and she wouldn't go. And he  
5 came back and got her. And took her.

6 Q. What did she say specifically about the choking?

7 A. She said that he had choked her until she wet  
8 her pants.

9 Q. Did she also -- isn't it true that she also said  
10 she passed out from the choking?

11 A. Yes, sir. And she was put in the back of the car.

12 Q. And did she say whose car it was that she was in  
13 back of when she passed out from choking and wet her pants?

14 A. Yes, sir.

15 Q. Whose car was that?

16 A. It was our car.

17 Q. Now, do you remember what you used to keep in the  
18 back of your car?

19 A. No. We just -- there was a sheet. The sheet was  
20 laid down in the back. We'd been to the rodeos and we'd  
21 lay in the back of the car, you know, while the guys were  
22 roping and stuff watching them.

23 Q. Okay, so what would you have in the back of the  
24 car?

25 A. Me and Tiffy both had a bag of clothes in there

1 but we'd taken them out when we gave the car back to Mom.

2 And there was Tiffy's silk comforter back there.

3 Q. Was there any foam rubber?

4 A. Oh, I don't think so.

5 Q. Okay, was there any sleeping bags?

6 A. Yes, sir.

7 Q. How many sleeping bags?

8 A. Two.

9 Q. Okay, now Mr. Bennett asked you a question on  
10 dire examination regarding Jaimi Charboneau having stayed  
11 out at the ranch shortly before your mother's death and  
12 you said, oh, no. Would Jaimi Charboneau have been welcome  
13 out at the ranch shortly before your mother's death?

14 A. To visit but he never was -- he never was welcome  
15 to stay at our house the night.

16 Q. Why is it that your mother indicated that Jaimi  
17 would be trouble if she continued to love him?

18 A. Because he had always been real jealous and it  
19 was -- every time Mom, you know, she had friends and stuff,  
20 friends that were men, you know, and that kind of trouble.  
21 But she didn't -- I think she was tired of being hit and  
22 stuff.

23 Q. Okay, did you ever hear Jaimi say what he would  
24 do to some of her male friends, if she didn't stay away  
25 from them?

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1           A. No. I never heard him verbally say that he would  
2 you know --

3           Q. Did he ever say to Marilyn what he would do to her  
4 if she didn't stay away from her male friends?

5           A. I had heard what Mom had said to me.

6           Q. What was that?

7           A. Well he said -- what he would do to her or what  
8 he would do to other males?

9           Q. Both.

10          A. That he would kill them.

11          Q. Kill Marilyn?

12          A. No, kill the men.

13          Q. Okay, and did he ever say that he would kill  
14 Marilyn if she didn't stay away from them?

15          A. Not -- she never ever told me that.

16          Q. Now, when -- where exactly were you when you  
17 heard the second set of shots, Tira?

18          A. In my bedroom.

19          Q. And who was with you?

20          A. Nobody was with me in my bedroom. Tiffy was in  
21 the kitchen.

22          Q. And you're sure Tiffy was in the kitchen?

23          A. Yes, sir.

24          Q. And this was after you had gone out to the sheep  
25 wagon once and then had come back in to change into your own

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1 clothes?

2 A. Yes, sir.

3 Q. How many shots did you hear?

4 A. I -- it seemed to me that there was three or more.

5 There had to be more than three. But --

6 Q. What kind of shots were they?

7 A. What kind of shots?

8 Q. Um hm. Do you know what a .22 sounds like when

9 it shoots?

10 A. Yes.

11 Q. Did it sound like a .22?

12 A. Yeah, the hollow points always sound a little

13 different than the not hollow points, but I wasn't really

14 paying -- I was so scared, I wasn't paying too much

15 attention.

16 Q. Could there have been more than five shots?

17 A. It could of, yes.

18 Q. But at least more than three?

19 A. Yes.

20 Q. You mentioned that you went some place to Fish

21 Creek. Where's Fish Creek at?

22 A. Up --it's at a reservoir. Oh, I don't know.

23 Fish Creek is what we call it. We go fishing up there.

24 Q. Okay, where's it by? What town?

25 A. Closest town, I think is Carey, I think to it.

Q. So it's kind of to the north and back up to the

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1 east,

2 A. Yeah, kind of back there on the desert.

3 Q. Did you ever vacation on the Owyhee Desert?

4 A. We'd -- I'd been to Bruneau before. But Mom

5 had been to Bruneau with Jaimi before.

6 Q. Okay, how long before?

7 A. Oh, during the summertime.

8 Q. How many months before her death?

9 A. Oh, I don't know. It -- it was when she got

10 bucked off that horse.

11 Q. Even approximately, Tira?

12 A. About five or six months. Well, maybe longer than

13 that.

14 Q. Okay, Tira, why -- why did she want to stay

15 friends with Jaimi?

16 A. I don't know. Maybe because she loved him. I

17 don't know.

18 Q. Tira isn't it true that one of the reasons that

19 she wanted to stay friends with Jaimi was because she was

20 afraid what would happen to her if she wasn't friends with

21 Jaimi?

22 A. We were alone talking to each other and I --

23 it was right after we had just left him. He was behind us

24 in a car -- in his truck. But it was -- she said that she --

25 she never said if she wanted -- that she was afraid of him or

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1 not. Of if she wasn't his friend. She just said that she  
2 wanted to remain friends with him. That's just all she said.

3 MR. ADAMSON: I have no further questions of this  
4 witness, Your Honor.

5 COURT: Re-direct Mr. Bennett?

6 REDIRECT EXAMINATION

7 BY MR. BENNETT:

8 Q. After your mother told you that Jaimi had raped  
9 her, and told her about the desert and so forth, did you  
10 fully believe your mother?

11 A. I didn't want to believe her but I believed her  
12 because she is my Mom.

13 Q. But did the thing seem improbable to you that she  
14 told?

15 A. No. I could believe that he had taken her but  
16 it was hard for me to believe that he had raped her.

17 Q. Did she tell you anything about what he did with  
18 her car?

19 A. Later on. But she said he had the car, that's all.

20 Q. What did she tell you later on. Did she tell you  
21 about him burning the car?

22 A. We had a telephone call that said that it had  
23 been found and that it was burned.

24 Q. And your mother told you about that?

25 A. Yeah.

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1 Q. Do you remember what day your mother told you  
2 about that?

3 A. I think it was Wednesday or Thursday between the  
4 time that she was raped and she was killed.

5 Q. Do you know who the telephone call was from?

6 A. Owyhee County Sheriff or someone or it was from  
7 a police officer. She had just told me that they had found  
8 it. It could have been from Elza who had received a call  
9 from Owyhee County.

10 Q. Oh, even before you received that call, when they  
11 knew where the car was, had your mother told you that Jaimi  
12 had taken it to Owyhee -- to Bruneau.

13 A. No, she had never told me where he had taken it.

14 Q. Did she tell you even before that that he was  
15 going to burn it?

16 A. No.

17 Q. Do you know Rosie?

18 A. Rosie who?

19 Q. I think her last name is -- Kirsch?

20 A. No, no sir.

21 Q. Do you know Casa -- Casanova Jack?

22 A. Oh, yes.

23 Q. Rosie's wife -- or Casanova Jack's wife?

24 A. Well, I know her but not very well.

25 Q. She's kind of related to your mother isn't she?

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1 A. Kinda yes.

2 Q. Okay, were you present when your mother talked to  
3 Rosie and told her about the rape?

4 MR. ADAMSON: Object, Your Honor, it's a leading and  
5 asking for hearsay.

6 COURT: It's overruled. Just answer -- it's a yes or  
7 no question. Were you present when that conversation took  
8 place?

9 REDIRECT CONTINUED

10 BY MR. BENNETT:

11 A. No, sir.

12 Q. Do you know anything about any time before --  
13 after the rape that Rosie talked to your mother?

14 A. No, sir.

15 Q. Had you seen Rosie any time in the week or two  
16 before her death. Your mother's death?

17 A. Not, that I remember, sir.

18 Q. The night before your mother says she was raped,  
19 do you remember what day it was that she told you she was  
20 raped, first to begin with?

21 A. The day that she had told us that she was raped?

22 Q. Yes.

23 A. It was -- no the night --

24 Q. The day you went over and picked her up in Wendell?

25 A. She told me what day -- well the night -- the day

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1 before -- she said it was that night that it happened.  
2 The night before she had --  
3 Q. Do you remember whether that was a Saturday or  
4 a Friday or what?  
5 A. No, I don't remember.  
6 Q. Okay, whatever night it was, do you remember she  
7 said, when she told you about what Jaimi had done, do you  
8 remember if she said, we went to Twin first and then Shoshone  
9 or do you remember anything about that?  
10 A. She said that she had been passed out. That she  
11 had passed out and that when she came to that they were on  
12 their way to Shoshone.  
13 Q. Okay, prior to that did she say where they had  
14 been?  
15 A. Prior?  
16 Q. Yeah, before that? Did she say anything about  
17 having gone from the Butte to say, to Twin Falls and then  
18 go back to Shoshone or did she say where they had been between  
19 the Butte Cafe?  
20 A. No, she never said anything like that.  
21 Q. Did she say what time it was that she was choked  
22 and passed out?  
23 A. That she was choked and passed out?  
24 Q. Yeah, did she say what time of the day or night  
25 that was?

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1           A. She said that was right after she got off work.  
2 I don't remember what time she got off work.  
3           Q. Do you know -- do you know Mike Johnson?  
4           A. Yes.  
5           Q. What is Mike Johnson to you? Is he your boyfriend?  
6           A. Yes.  
7           Q. And does he have a cousin?  
8           MR. ADAMSON: I object. Your Honor, this is irrelevant.  
9           COURT: What is the reason for these questions?  
10          MR. BENNETT: I'm trying to establish, Your Honor,  
11 that the defendant went to the Alley that night and we  
12 understand that he met with this boyfriend --  
13          COURT: But this witness has testified two or three  
14 times that in fact, what her mother has indicated. And the  
15 -- it seems to me that the identity of some person that  
16 might have seen them -- this witness knows nothing about.  
17          MR. BENNETT: Well, I -- let me ask a different  
18 question that might might --  
19                               REDIRECT CONTINUED.  
20 BY MR. BENNETT:  
21          Q. Did you mother, at any time within the next few  
22 days, after she said she was raped, tell you anything about  
23 having run into this Mike Johnson at the Alley?  
24          MR. ADAMSON: Object, Your Honor. It's leading.  
25          COURT: That's overruled.

REDIRECT CONTINUED

BY MR. BENNETT:

Q. Mike Johnson's cousin?

A. Doug Johnson. The night that she was going to go to the Alley, she was -- she was -- planned to go over and see Doug Johnson at a dance in Gooding. But she was afraid to go over there cause she didn't know if Jaimi was over there or not. And that's why she went to the Alley. Because she was afraid to go over -- cause nobody would go with her. Me and Tif. She asked me and Tif if we wanted to go and we both didn't want to go and so that's why she went to the Alley.

Q. Now you're talking about the Saturday before she was killed?

A. Yes, she -- she -- she might have gone to the movie with Mike Connors or go to Gooding with Mike Johnson. But she was afraid to go -- she didn't want to go with Mike Connors, she's afraid to go to Gooding to meet Mike Johnson without someone with her. That's why she went to the Alley.

Q. But now a week before that, the Friday night before that, did she say anything about having met these same people?

A. Doug Johnson?

Q. Yeah.

A. When she was with Jaimi?

Q. Yes.

Halman, Def, Redi

1 A. No, she doesn't -- she didn't say anything about  
2 that.

3 Q. Okay, That's all the questions, I have.

4 COURT: Recross?

5 MR. ADAMSON: Just briefly, Your Honor.

6 RECROSS EXAMINATION

7 BY MR. ADAMSON:

8 Q. Tira, for the life of me, I have a hard time  
9 understanding something and so I need you to clear it up  
10 for me.

11 A. Okay.

12 Q. You said earlier that your mother was not afraid  
13 of Jaimi.

14 A. Said she was not?

15 Q. That's my understanding of the testimony. That  
16 she was not afraid of Jaimi. Was she afraid of Jaimi  
17 Charboneau?

18 A. Yes, she was.

19 Q. All right, why was she afraid of Jaimi Charboneau?

20 A. Because he'd hit her and stuff. And she was  
21 just afraid of him because of that he had -- because if he  
22 ever saw her with any other guy, that she was afraid that  
23 something would happen.

24 Q. What was she afraid would happen?

25 A. She was afraid that Jaimi would blow up or something  
you know.

Halman, Def, Redi  
Def, ReX

1 Q. Had you ever seen Jaimi blow up?  
2 A. Yeah, a couple times.  
3 Q. And what happens when Jaimi blows up?  
4 A. He just calls her a couple of pretty disgusting  
5 names and -- and he hit her, you know, but I just -- I only  
6 seen him really blow up once.  
7 Q. The night or even two nights before your mother  
8 was murdered, would Jaimi have been welcome at your home?  
9 A. To visit, yes.  
10 Q. Even after she was raped?  
11 A. Oh, not after she was raped, no. But before, that's  
12 what you just said is before she was raped. Was he --  
13 COURT: The question, Madam, was, two days before her  
14 murder -- would Jaimi Charboneau have been welcome?  
15 A. Oh, no sir, he wasn't.  
16 Q. And was she scared of Mr. Charboneau at that time?  
17 A. Yes.  
18 Q. How scared was she?  
19 A. Well, in her report it said that she was scared  
20 for her life.  
21 Q. Okay, now is that the reason that she didn't go  
22 to Gooding?  
23 A. Yes, sir.  
24 MR. ADAMSON: I have no further questions, Your Honor.  
25 COURT: You may be seated Ma'am. May this witness

Halman, Def, ReX

1 be excused?

2 MR. BENNETT: I believe so, yes, Your Honor.

3 MR. ADAMSON: Yes, Your Honor.

4 COURT: You are free to leave the Courthouse.

5 Next witness Mr. Bennett.

6 MR. BENNETT: Your Honor, I'd like to take a brief  
7 recess to see if my next witness is here.

8 COURT: Who is your next witness?

9 MR. BENNETT: (Unintelligible) Walsh.

10 COURT: Court will be in recess until 3:15.

11 MR. BENNETT: Thank you.

12 Court recessed.

13 Court reconvened.

14 COURT: You may be seated. Back on record in State  
15 of Idaho vs. Charboneau. The parties and their counsel are  
16 present. Mr. Bennett, you've indicated you'll call another  
17 witness.

18 MR. BENNETT: We've talked with the witness and from  
19 the information the witness gave us, it wouldn't -- it would  
20 be a waste of the Court's time and so we are now ready to  
21 rest and we do rest.

22 COURT: All right, I'll hear closing argument. Are  
23 the parties ready for closing argument as a result? Mr.  
24 Adamson?

25 MR. ADAMSON: State is ready, Your Honor.

## **EXHIBIT 3**

IN THE SUPREME COURT OF THE STATE OF IDAHO

\*\*\*\*\*

THE STATE OF IDAHO,

Plaintiff/Respondent,

vs.

JAMIE DEAN CHARBONEAU,

Defendant/Appellant.

DOCKET NO. 16339

TRANSCRIPT ON APPEAL

Fifth Judicial District

Jerome County

HON. PHILLIP M. BECKER

District Judge

A p p e a r a n c e s:

MR. GREG J. FULLER, ESQ., Attorney at Law,  
Fuller & Meservy, P. O. Box 30, Jerome, Idaho,  
appearing for Appellant.

MR. D. MARC HAWS, ESQ., Deputy Attorney General,  
Office of the Attorney General, Statehouse,  
Boise, Idaho,  
appearing for Respondent.

*Virginia M. Bailey, RPR*  
*Certified Shorthand Reporter*



1           TIFFNIE DAWN HALMAN ARBAUGH,  
2   produced as a witness at the instance of the State, being  
3   first duly sworn, was examined and testified as follows:  
4   DIRECT EXAMINATION BY MR. HAWS:  
5           A.     Good morning.  
6           Q.     Would you state your name, please.  
7           A.     Tiffnie Dawn Halman Arbaugh.  
8           Q.     Spell Tiffnie?  
9           A.     T-i-f-f-n-i-e.  
10          Q.     And then you said a middle name. What was that?  
11          A.     Dawn.  
12          Q.     Spell that.  
13          A.     D-a-w-n.  
14          Q.     And your last name?  
15          A.     A-r-b-a-u-g-h.  
16          Q.     Where does the name Halman come from, Tiffnie?  
17          A.     It's my father's name.  
18          Q.     And do you live with him?  
19          A.     No, I don't.  
20          Q.     How long has it been since you've lived with  
21   your father?  
22          A.     Oh, I was four years' old. So it's been eleven  
23   years.  
24          Q.     So you go by Arbaugh?  
25          A.     Yes.

1 Q. Where do you live, Tiffnie?  
2 A. No, it's been thirteen years. Excuse me.  
3 I live with my grandparents.  
4 Q. Who are your grandparents?  
5 A. Jim and Mary Arbaugh.  
6 Q. Where do they live?  
7 A. In Jerome.  
8 Q. Does anybody else live there besides you and  
9 your grandparents?  
10 A. Yes.  
11 Q. Who else?  
12 A. My sister and my two aunts and my cousin.  
13 Q. What is your sister's name?  
14 A. Tira.  
15 Q. How old are you?  
16 A. Seventeen.  
17 Q. How old is Tira?  
18 A. Fifteen.  
19 Q. Spell Tira's name for us, would you?  
20 A. T-i-r-a.  
21 Q. And who are your aunts who live there with you  
22 and your grandparents?  
23 A. Margene and Marlene.  
24 Q. Okay. How old were you back in June and July --  
25 well, strike that. Back in June of 1984?

1 A. Sixteen.

2 Q. When did you turn 17?

3 A. July 4th.

4 Q. On the 4th of July of last year?

5 A. Yes.

6 Q. Where is your mother?

7 A. Where is she now? She's dead.

8 Q. When was the last time you saw her?

9 A. On the 1st day of July -- yeah. July.

10 Q. What year?

11 A. '84.

12 THE COURT: Please speak up a little bit. Some of the

13 jurors are not hearing you, Tiffnie. I know you're nervous,

14 but talk a little louder. Talk slower, if that will help.

15 A. On the 1st day of July.

16 BY MR. HAWS:

17 Q. Last year?

18 A. Yes.

19 Q. What kind of a person was your mother, Tiffnie?

20 Would you tell the jury?

21 A. She was a very caring person, and she was very

22 pretty, and she was a cowgirl.

23 Q. A cowgirl?

24 A. Yes.

25 Q. Did she have horses?

1 A. Yes.  
2 Q. Did you and your mom have quite a few horses,  
3 Tiffnie?  
4 A. Yes.  
5 Q. Did she raise horses?  
6 A. Yes.  
7 Q. Let me ask you specifically about one horse  
8 called, I think it's little Syner?  
9 A. Syner.  
10 Q. How do you spell that?  
11 A. S-y-n-e-r.  
12 Q. S-y-n-e-r?  
13 A. Yes.  
14 Q. When did you or your mother get this horse  
15 Little Syner?  
16 A. We got her as a weanling, quite a few years  
17 ago.  
18 Q. How many, approximately how many years ago?  
19 A. I think four or five. Probably four, I think.  
20 Q. Do you know a person by the name of Jamie  
21 Charboneau?  
22 A. Yes.  
23 Q. Is he in the courtroom today?  
24 A. Yes.  
25 Q. Would you point to which person he is, please,

1 for the jury?

2 A. Right there (pointing).

3 Q. Which person are you referring to?

4 A. The man right on this side of the box.

5 Q. The person in the dark blue shirt?

6 A. Yes.

7 Q. When did you first meet Mr. Charboneau?

8 A. When we lived up in Prairie, Idaho.

9 Q. Was that before or after your mother got this  
10 horse Little Syner, or Little Syner?

11 A. Syner. It was afterwards.

12 Q. So she already had that horse before she met  
13 him?

14 A. Yeah.

15 Q. Do you know what happened to that horse?

16 A. Yeah. We sold her to -- well, we traded her to  
17 my cousin.

18 Q. Who is your cousin?

19 A. Linda Hine.

20 Q. Why do you trade the horse?

21 A. For a car.

22 Q. What kind of a car was it, Tiffnie?

23 A. A little white Fiat.

24 Q. Can you describe the Fiat?

25 A. It was a two door station wagon with a hatchback

1 in the back.

2 Q. Color?

3 A. It was white, and it had like luggage racks up

4 on top kind of like.

5 Q. Did you ever drive the car?

6 A. Yes, I did.

7 Q. How long before the 1st of July did you get the

8 car, you and your mom?

9 A. Just a couple of months, I think. Didn't have

10 it very long.

11 Q. Did you ever have any accidents with the car?

12 A. Yeah.

13 Q. Would you explain that to the jury, please?

14 A. It was -- can't remember where I was at but the

15 wind was blowing and I let, held the door opened and it

16 swung opened too far and got a little dent right in the

17 door.

18 Q. Where the door comes out and meets the body?

19 A. Yeah.

20 Q. Did the seats in that car, the back seats, lay

21 down and make a large area in the back?

22 A. Yes, they did.

23 Q. Do you recall whether you and your mother, Tira,

24 used the car that way with the seats down?

25 A. Yeah, we did.

1 Q. Was that common?

2 A. Yeah, quite a bit.

3 Q. Do you recall ever taking, carrying things

4 around in the car?

5 A. Yes.

6 Q. Like what kinds of things?

7 A. Oh, we had sleeping bags and stuff like that in

8 the car and clothes and stuff like that.

9 Q. Did you ever take the car to a rodeo?

10 A. Yes, we did.

11 Q. Did anybody ever use the car to sleep in?

12 A. Well, we did that the day we went do the rodeo.

13 We just flipped the top up and laid in the back and stuff.

14 Q. You described some sleeping bags back there.

15 Would you still recognize those sleeping bags?

16 A. Yes.

17 Q. What about a blanket?

18 A. Yeah, my gold comforter.

19 Q. Your gold comforter?

20 A. It was gold or yellowish.

21 Q. Any other things that you can recall that your

22 mother carried around in the car?

23 A. Oh, she had a, a briefcase and her backpack and

24 duffel bag, stuff like that.

25 Q. Would you describe her briefcase, please?

1           A.       It's a leather briefcase, and it has two kind of  
2 almost square handles on them up at the top and it's, you  
3 can push it at the ends and the sides come out.  
4           Q.       So it has kind of hinges?  
5           A.       Yeah.  
6           Q.       What did your mother have in that briefcase?  
7           A.       Just papers and stuff. I don't know. I didn't  
8 pay much attention to it.  
9           Q.       Where did she usually have it?  
10          A.       In the car or in the house.  
11          Q.       Where did she usually carry it in the car?  
12          A.       Between the seats or on the back seat.  
13          Q.       Did your mother use a purse?  
14          A.       No, she didn't.  
15          Q.       What did she use, if anything, to carry personal  
16 items around with her?  
17          A.       A backpack.  
18          Q.       Was this a real large backpack?  
19          A.       Medium size backpack.  
20          Q.       An actual backpack you could put on your  
21 shoulders, had shoulder straps?  
22          A.       Yeah.  
23          Q.       May I approach the witness, your Honor?  
24          THE COURT:   You may.  
25



1 BY MR. HAWS:

2 Q. Tiffnie, I'm showing you what's been marked for  
3 identification. Actually, it's been admitted into evidence  
4 as State's Exhibit Number 73.

5 Is that a brown briefcase?

6 A. Yes, it is.

7 Q. Would you examine that, please, and see if that  
8 is the briefcase that you were describing that belonged to  
9 your mother?

10 A. Yes.

11 Q. That's the one that she carried around in the  
12 car with her, the one with the kind of square handles that  
13 you're talking about?

14 A. Yeah.

15 Q. And the hinge -- hinged opening?

16 A. Yeah.

17 Q. Let me show you what's been marked for  
18 identification as State's Exhibit Number 75. Would you  
19 identify for the record, please, what that is?

20 A. It is my mother's backpack.

21 Q. That's it?

22 A. Yes, it is.

23 Q. Would you examine it carefully and tell me how  
24 you know?

25 A. Because her name's right here.

1 Q. On a label?

2 A. Yes.

3 Q. Did it have shoulder straps like this?

4 A. Yes, it did.

5 Q. Is this the right color and style?

6 A. Yes, it is.

7 Q. Did it have a zippered opening?

8 A. Yes, it did.

9 Q. What about a front pocket?

10 A. Yes, it did.

11 Q. That's it?

12 A. Uh-huh. (Witness nodded head up and down.)

13 Q. Is that in the same condition as when your

14 mother had it?

15 A. No, it had stuff in it when she had it; but it

16 looked the same, yeah.

17 Q. What about dirt and stuff on it?

18 A. Oh, it looks a little dirtier, yes.

19 Q. What kind of stuff did your mother carry around

20 in that knapsack, Tiffnie?

21 A. Oh, personal stuff like make-up and overnight

22 stuff and stuff like that.

23 Q. Have you ever seen State's Exhibit Number 83

24 before?

25 A. Yes.

1 Q. What is that?

2 A. It's little things she kept, like business cards  
3 and papers and stuff like that in.

4 Q. Do you want to examine that to make sure it's  
5 the one your mother had?

6 A. Sure. Yes, it's hers.

7 Q. You recognize some of her papers in it?

8 A. Yeah. Yeah. And her driver's license are in  
9 there.

10 Q. Does it seem to be in the same condition as when  
11 you last saw it?

12 A. I haven't seen it in a long time. I don't  
13 know. I never look inside of it. I just, just seen it like  
14 this before. I don't look inside of it very often.

15 Q. Did you ever see her open it up, see her  
16 driver's license and so on?

17 A. I think so.

18 Q. When was the last time you saw this State's  
19 Exhibit Number 83?

20 A. It was before she died.

21 Q. And would it be in June of 1984?

22 A. Yeah, before, around there.

23 Q. Let me show you State's Exhibit Number 76. Do  
24 you recognize -- Describe for the record first what I'm  
25 handing you here.

1           A.       A box of Blazers .22 shells.  
2           Q.       Some .22 shells and a Blazer box, Blazer  
3 ammunition?  
4           A.       Yes.  
5           Q.       Did you ever see your mother use that kind of  
6 ammunition?  
7           A.       Yes, I have.  
8           Q.       Did she carry that in her knapsack?  
9           A.       Yes, she did.  
10          Q.       When was the last time you saw your mother's  
11 knapsack?  
12          A.       In June.  
13          Q.       In June of 1984?  
14          A.       Yes.  
15          Q.       Do you recall specifically what the date was?  
16          A.       No, I don't.  
17          Q.       Let me ask you this: Do you recall in the  
18 latter part of June going out to Wendell with your aunt  
19 Marlene and picking your mother up at some friend's house?  
20          A.       Yes, I do.  
21          MR. STOKER: Your Honor, I object counsel leading the  
22 witness.  
23          MR. HAWS: I'm asking her about a specific occasion,  
24 see if she remembers it. She can answer it yes or no.  
25          THE COURT: That is correct. It calls for a yes or no

1 answer. Objection overruled.

2 BY MR. HAWS:

3 Q. Do you recall that, doing that?

4 A. Yes, I do.

5 Q. And let me ask you specifically with reference  
6 to that time did you ever see the little station wagon again  
7 after that time?

8 A. No, I didn't.

9 Q. After picking your mother up in Wendell you  
10 never saw it again?

11 A. No, I didn't.

12 Q. Let me show you what's been admitted into  
13 evidence, two color photographs, Exhibits 15 and 17. Do you  
14 recognize what that is?

15 A. It's our car.

16 Q. The little white Fiat?

17 A. Yeah.

18 Q. In the same condition when you last saw it?

19 A. No.

20 Q. Changed?

21 A. Yes.

22 Q. Specifically, does State's Exhibit Number 15  
23 show that little crease on the door that you were talking  
24 about?

25 A. Yes, it does.

1 Q. Where does it show it?  
2 A. Right here. Right there, along there  
3 (indicating).  
4 Q. Okay. Where were you living, Tiffnie, in the  
5 month of June, 1984?  
6 A. At El Rancho 95 -- 90 -- 93? Can't remember  
7 now. In Jerome.  
8 Q. Is it right in Jerome?  
9 A. No, it's outside of town.  
10 Q. El Rancho 93?  
11 A. Yes.  
12 Q. Where was your mother working during that period  
13 of time?  
14 A. At the Butte.  
15 Q. Where is that located in relationship to El  
16 Rancho 93?  
17 A. Just down the road on 93.  
18 Q. Toward Jerome?  
19 A. Yes.  
20 Q. Let me show you State's Exhibit Number 9. Would  
21 you describe what that is, first of all, for the record?  
22 A. It's the headgate going over the driveway into  
23 our house.  
24 Q. Is it a photograph of that?  
25 A. Yes, it is.

1 Q. Okay. Does State's Exhibit Number 9 show the  
2 entrance to El Rancho 93, as you remember it?

3 A. Yes, it does.

4 Q. Taken a different time of year, though?

5 A. Yes.

6 Q. State's Exhibit 10, is that another color  
7 photograph?

8 A. Yes, it is.

9 Q. What does it show?

10 A. The Butte.

11 Q. The Butte cafe?

12 A. Yeah.

13 Q. Service station?

14 A. Yes.

15 Q. Is that where your mother worked?

16 A. Yes.

17 Q. Do those photographs show those two locations  
18 accurately except for the time of year?

19 A. Yes.

20 MR. HAWS: Move the admission of State's Exhibits 9  
21 and 10.

22 MR. STOKER: Your Honor, the only objection we have to  
23 either one of those two pictures is they don't appear to me  
24 to be rather probative of anything.

25 MR. HAWS: I'm offering them for illustrative

1 purposes, your Honor, just to help the jury to see the  
2 testimony that has been admitted or been elicited here from  
3 the witnesses. I believe several witnesses testified about  
4 the Butte, and there have been witnesses testify about El  
5 Rancho 93, and LaDonna Jones testified about it, and there  
6 will be other witnesses as well. It's simply an aid to the  
7 jury, your Honor, for illustrative purposes.

8 THE COURT: For illustrative purposes State's Exhibit  
9 9 and 10 may be admitted. I instruct the clerk to so mark  
10 them.

11

12 (State's Exhibits 9 and 10 admitted.)

13

14 BY MR. HAWS:

15 Q. Would you describe El Rancho 93 for the jury,  
16 please, Tiffnie?

17 A. El Rancho 93 had three houses on it. It had a  
18 great big house that LaDonna lived in. It had a smaller  
19 house that we lived in. Then it had an empty house right  
20 next to us. And it had a farm shed where they put all the  
21 machines and stuff in, but it had a little office like  
22 that. There was a telephone in there and we had access to  
23 that telephone. Then it had a cellar right next to the  
24 other side of the driveway. And there was a loafing shed  
25 and corrals on the other side. Then it had a field around



1 it where we kept our horses and stuff.

2 Q. When you say cellar, how large a building are  
3 you talking about?

4 A. It's a large cellar.

5 Q. You don't need to give us dimensions. Is it  
6 above the ground?

7 A. Yes, it is.

8 Q. At ground level, rather?

9 A. Yeah.

10 Q. You don't have to go down into the ground to get  
11 into it?

12 A. No, you don't.

13 Q. Do you recall whether the defendant Jamie  
14 Charboneau ever lived there at El Rancho 93 with you and  
15 your mother?

16 A. Yes, he did. He never lived with me, but he  
17 lived out there with my mother.

18 Q. Do you know when your mother first moved to El  
19 Rancho 93?

20 A. It was before Christmas. I know that.

21 Q. That would be in the year 1983, then?

22 A. Yes.

23 Q. Do you recall when you first moved out to El  
24 Rancho 93?

25 A. It was after Christmas of '83.

1 Q. You don't know how long after Christmas?  
2 A. No, I don't.  
3 Q. Approximately?  
4 A. Probably sometime in January or could have been  
5 the last part of December.  
6 Q. Was Mr. Charboneau living there then?  
7 A. No, he wasn't.  
8 Q. He and your mother separated?  
9 A. Yes, they had.  
10 Q. Do you know whether your mother undertook any  
11 divorce proceedings?  
12 A. At that time?  
13 Q. After being separated.  
14 A. Yes, she had.  
15 Q. She had?  
16 A. I think so.  
17 Q. Were your mother and Mr. Charboneau then legally  
18 married at one point?  
19 A. Yes, they were.  
20 Q. Were you ever adopted to him?  
21 A. No, I wasn't.  
22 Q. Or Tira?  
23 A. No.  
24 Q. Let's go to the 21st of June 1984.  
25 Q. You're not positive about that date; is that

1 correct? Do you know what happened that date?  
2 A. No.  
3 Q. Okay. Let's go to the date then on which you  
4 remember going to Wendell --  
5 A. Oh, okay.  
6 Q. -- to pick up your mother.  
7 A. Yeah.  
8 Q. Do you recall doing that?  
9 A. Yes.  
10 Q. And who did you go with?  
11 A. My aunt Marlene and her boyfriend Spencer.  
12 Q. Anybody else?  
13 A. Oh, Tira went with us.  
14 Q. And Tira?  
15 A. Uh-huh. (Witness nodded head up and down.)  
16 Q. Whose car were you driving?  
17 A. We were in my grandfather's pickup.  
18 Q. And did you in fact pick your mother up?  
19 A. Yes, we did.  
20 Q. Do you know whose place it was that you picked  
21 her up at?  
22 A. It was Alvin and Bobby Borges's house.  
23 Q. Alvin and Bobby Borges?  
24 A. Yes.  
25 Q. Do you know the spelling on that name?

1           A.     B-o-r-g-e-s.

2           Q.     Do you recall seeing your mother at that time?

3           A.     Yes, I do.

4           Q.     Do you recall approximately what time of day

5     that was?

6           A.     It was in the morning, but I don't know what

7     time.

8           Q.     You're not sure of the time?

9           A.     No.

10          Q.     Can you describe how your mother was?

11          A.     She was in a pair of shorts and a western shirt,

12     and she didn't look very good. She was kind of beat up and

13     bruised and stuff.

14          Q.     Describe her hair. Was it in its unusual

15     condition?

16          A.     No, it was all flat and usually she wore it

17     really curly and stuff, and it was all flat and matted and

18     messy and stuff.

19          Q.     Describe how she was acting. Was that her usual

20     way of acting?

21          A.     No. She was really -- she had her shoulders all

22     stooped up and her head down, and she was crying and stuff

23     like that.

24          Q.     How was she usually?

25          A.     Smiling and always, just loose and cheerful and,

1 you know, she was always relaxed most of the time.

2 Q. Did you actually see her crying?

3 A. Yes, I did.

4 Q. Where did you take her after you picked her up?

5 A. We went to my grandparents' house, and then my

6 aunt took her down to the police station.

7 Q. Aunt Marlene?

8 A. Yes.

9 Q. Tiffnie, let's talk about the 1st day of July,

10 1984. First let me ask you: Do you know where you were the

11 night before and the early morning hours of the 1st of July,

12 1984?

13 A. Yes.

14 Q. Where were you?

15 A. That night me and Bart, my boyfriend, went down

16 to the hot tubs with some of our friends, and then we went

17 to Gooding looking for a dance that was supposed to be over

18 there.

19 Q. Now, describe Bart.

20 A. He's about six foot, and he's -- he's a cowboy,

21 and he's cute.

22 Q. Was he working at that time?

23 A. Yes.

24 Q. Where did he work?

25 A. He works at Circle Four Cattle Company of

1 Jerome.

2 Q. Where was he living back then?

3 A. With us.

4 Q. And El Rancho 93?

5 A. Yes.

6 Q. Was anybody else living there on or about the

7 1st of July, 1984?

8 A. No, it was just the four of us.

9 Q. The four of you, being your mother Marilyn --

10 A. Yes.

11 Q. -- you and Bart?

12 A. And Tira.

13 Q. And Tira?

14 A. (Witness nodded head up and down.)

15 Q. What time did you get in on the, that night?

16 A. It was late, 'cause we stayed in Gooding and had

17 breakfast at the Lincoln Inn, so it was pretty late. I

18 don't know. About 1:00, 1:30.

19 Q. 1:00 or 1:30 in the morning?

20 A. Yes.

21 Q. And that would be the morning of the 1st of

22 July?

23 A. Yes.

24 Q. Do you recall what time you had gone over, over

25 to Gooding?

1 A. No, I don't.

2 Q. So when you got in, you got into El Rancho 93,  
3 at about 1:30 in the morning?

4 A. Yeah.

5 Q. And was anybody home?

6 A. Tira was home.

7 Q. Tira was home?

8 A. Yes.

9 Q. Where was she?

10 A. She was in bed.

11 Q. Asleep?

12 A. Yeah.

13 Q. Anybody else home at that time?

14 A. No.

15 Q. Did you stay there that night?

16 A. Yes, I did.

17 Q. Did Bart stay there that night?

18 A. Yes, he did.

19 Q. Why was Bart staying there?

20 A. Because he was staying there with us. He  
21 started staying there around Christmastime, when my mom and  
22 Jamie broke up, so he wouldn't come around.

23 Q. So who wouldn't come around?

24 A. So Jamie wouldn't come around.

25 Q. What kind of relationship did your mom and Bart

1 have?

2 A. Mother-son relationship. They were very close.

3 Q. Friends?

4 A. Yes.

5 Q. You used the term mother-son relationship. Tell  
6 the jury why you use that term?

7 A. 'Cause they were close like mother and son,  
8 because his mother had died when he was really young, and we  
9 started going out, they got really close.

10 Q. What did he call her?

11 A. Mammy. That was her nickname.

12 Q. Was it a friendly, joking type relationship?

13 A. Yeah.

14 Q. So on the, in the early morning hours of the 1st  
15 of July, Bart was there with you that night?

16 A. Yes.

17 Q. Did Bart go to work at all on that day, the 1st  
18 of July?

19 A. Yes, he did.

20 Q. Do you recall what day of the week that was?

21 A. It was Sunday.

22 Q. But he went to work?

23 A. Yes.

24 Q. Do you know approximately what time he went to  
25 work?



1 A. Yes.

2 Q. Did she wake you up?

3 A. Yes, she did.

4 Q. How did she do that?

5 A. She just came in and said good morning and

6 brought us some horse magazines and a calendar, a western

7 calendar.

8 Q. What kind of a mood was Marilyn in when she came

9 home?

10 A. She was in a good mood.

11 Q. Did Tira wake up, also?

12 A. Yes, she did.

13 Q. So who was at the house at that time when

14 Marilyn came home?

15 A. Just me, my little sister, and my mom.

16 Q. Did your mom bring anything else with her other

17 than the Horseman magazines or calendars?

18 A. Not that I can remember.

19 Q. You don't remember seeing anything else?

20 A. No.

21 Q. About what time was that, then, when your mother

22 came home?

23 A. Around 10:30, 10:00, 10:30. I don't know. I

24 can't remember.

25 Q. And when she came home, you girls woke up?

1           A.       Yes.

2           Q.       What happened next?

3           A.       She just gave us her stuff and told us that if

4 we wanted to, we could go to Fairfield with her because she,

5 we was going to go to Fairfield with Ray Broner and Pete

6 Jones.

7           Q.       That was the plan for Sunday?

8           A.       Yes.

9           Q.       Did she say about what time?

10          A.       No. As soon as we got ready is what she said.

11          Q.       As soon as you got ready?

12          A.       Yeah.

13          Q.       And that was with Ray Broner?

14          A.       Yes.

15          Q.       Can you spell that last name?

16          A.       B-r-o-n-e-r.

17          Q.       And Pete Jones?

18          A.       Yes.

19          Q.       Was that the other person?

20          A.       Yes.

21          Q.       What happened next?

22          A.       She got into the bathtub, and I started reading

23 my book, and I don't know what Tira was doing.

24          Q.       Your mom got in the bathtub?

25          A.       Yes.

1 Q. Where is the bathroom located from the room  
2 where you were?

3 A. They -- just go into mine and Mom's bedroom and  
4 the bathroom and Tira's bedroom.

5 Q. So the bathroom is right next to the bedroom?

6 A. Yes.

7 Q. Did -- could you tell what your mom was doing in  
8 the bathroom?

9 A. She was taking a bath 'cause the water was  
10 running.

11 Q. You could hear the water running?

12 A. Yeah.

13 Q. Did you talk to her at all when she was in  
14 there?

15 A. No, I didn't.

16 Q. After your mother took a bath, what did you see  
17 next?

18 A. She came into the bathroom, and she was picking  
19 her hair out, and Tira got into the bathtub.

20 Q. When you say picking her hair out, what do you  
21 mean by picking her hair out?

22 A. She had a really curly perm, so she had a pick,  
23 and she was picking it out so she wouldn't comb the curls  
24 out.

25 Q. You're talking about a hair pick?

1           A.       Yeah.

2           Q.       Is that kind of like a comb, then?

3           A.       It's kind of. It's square, about that big, and

4       it's blue and just like a regular pick.

5           Q.       So she was kind of combing her hair out?

6           A.       Yeah.

7           Q.       Or as you say, kind of picking it out?

8           A.       Yeah.

9           Q.       Was she dressed?

10          A.       Yeah. She was wearing blue shorts and a blue

11       summer shirt that matched it.

12          Q.       Describe this summer shirt you're talking about,

13       for the jury. Would you do that, Tiffnie?

14          A.       It's blue terry cloth, has white, like, I think

15       it's cotton or something, straps just little like spaghetti

16       straps that come over the shoulder, and then it has, I

17       think, it has elastic around the bottom.

18          Q.       Is it a loose fitting garment?

19          A.       Yeah.

20          Q.       Do you know whether she was wearing a bra?

21          A.       No, she wasn't.

22          Q.       Did you have any additional conversation with

23       her at that time?

24          A.       No, I didn't.

25          Q.       You were still reading?

1 A. Yes, I was.

2 Q. Where was Tira?

3 A. She was in the bathtub at that time.

4 Q. So Tira came and got in the bathtub?

5 A. Yeah.

6 Q. What's the next thing you remember your mother  
7 doing?

8 A. She came, came in from talking on the telephone,  
9 and asked us if we'd turned the horses loose.

10 Q. Before we get there, did you see her leave to go  
11 talk on the telephone?

12 A. No, I didn't.

13 Q. Did she say she was going to go talk on the  
14 telephone?

15 A. I wasn't really paying attention. I was reading  
16 my book.

17 Q. How do you know she was talking on the  
18 telephone?

19 A. Because when she came back, she said she had  
20 talked to grandpa.

21 Q. How long was she gone about?

22 A. I couldn't tell you. I don't know.

23 Q. When she came in from talking on the telephone,  
24 did she come back into your room?

25 A. Yeah.

1 Q. Did she have anything with her at that time?  
2 A. No.  
3 Q. What did she have on, if anything, besides the  
4 matching top and shorts?  
5 A. Her thongs and her sunglasses.  
6 Q. And Tira was still in the bathtub?  
7 A. Yeah.  
8 Q. Was there any conversation between you and your  
9 mother then when she came back in besides her saying that  
10 she had just talked to grandpa?  
11 A. Just that she asked if we had turned the horses  
12 into the other corrals.  
13 Q. Okay. Let me make sure I understand. She asked  
14 you if you had turned the horses into the other corral?  
15 A. Yeah. She asked me and Tira.  
16 Q. Where were the horses supposed to be?  
17 A. In the far corral that connects to the pasture.  
18 Q. Why were they supposed to be there?  
19 A. So that they could get water, but yet they could  
20 go out and eat in the field.  
21 Q. How many horses did you have?  
22 A. We had -- I had a horse. My sister had a  
23 horse. We had, my mom -- well, all of us girls have a horse  
24 that we share and, oh, and then my mom's horse was out  
25 there.

1 Q. Your mom's horse or horses? What did you say?  
2 A. Horse. She had an Arabian mare.  
3 Q. Now, this was after she had sold --  
4 A. Yeah.  
5 Q. -- Little Syner to Linda Hine?  
6 A. Yeah.  
7 Q. Can you describe this corral area more for the  
8 jury? Maybe I could assist you.  
9 Tiffnie, I'm showing you a large photograph; is  
10 that correct?  
11 A. Yes.  
12 Q. Marked State's Exhibit Number 6. Is that an  
13 aerial photograph showing anything that you know?  
14 A. Yes, that's El Rancho 93.  
15 Q. That shows El Rancho 93?  
16 A. Yes.  
17 Q. Does it show LaDonna Jones' house, as you  
18 described it?  
19 A. Yes, it does.  
20 Q. Does it show the house that you and your mother  
21 and Tira were living in?  
22 A. Yes.  
23 Q. And it seems to be an accurate layout of El  
24 Rancho 93?  
25 A. Yes.

1 Q. Does it show the cellar?

2 A. Yes, it does.

3 Q. Corral areas?

4 A. Yes, it does.

5 MR. HAWS: Your Honor, I would move the admission of  
6 State's Exhibit 6 so that this witness can write on this  
7 photograph. It's identical, I believe, to State's Exhibit  
8 Number 7 which has already been admitted; it's a duplicate  
9 copy of it. I just want her to be able to write on it.

10 MR. STOKER: No objection.

11 THE COURT: All right. It may be admitted. I will  
12 ask the clerk to mark it.

13

14 (State's Exhibit 6 admitted.)

15

16 BY MR. HAWS:

17 Q. Now, Tiffnie, I wonder if I could get you to  
18 come down here to this stand and explain this to the jury.  
19 Would you do that.

20 THE COURT: Can all you jurors see this?

21 BY MR. HAWS:

22 Q. Tiffnie, would you take this green pen and show  
23 the jury where that corral, where those corrals are that you  
24 are referring to?

25 A. They are right here. These right here are the



1 corrals that they were in. This right here is the one that  
2 they are supposed to be in because they can come out to this  
3 pasture right here. There is a little alleyway, but there's  
4 water right in here for them, but the gate right here, and  
5 the gates right here was opened, and they were in here  
6 (indicating).

7 Q. Were they locked in there? In other words, were  
8 the gates closed?

9 A. No, I think the gates were just opened.

10 Q. What were the -- okay. Strike that. But they  
11 should have been in the far --

12 A. Yes, they should have been right here  
13 (indicating).

14 Q. In the far corral? Is that where they had been  
15 the last time you had seen them?

16 A. Yeah.

17 Q. Now, you used the term "alleyway," that there  
18 was an alleyway for the horses to get out in the field?

19 A. Well, there is a fence right here coming down so  
20 they can't get into here, and there's a fence right here, so  
21 that we had the gate closed, opened right here so they  
22 couldn't get across and come all the way up here because  
23 there is another way to get out to the field right here. So  
24 there is a fence right here. So there was just like this  
25 little walkway for them to get in right there (indicating).

1 Q. That would be right at the south end of the  
2 cellar?  
3 A. Yeah, just --  
4 Q. Okay. Now, was there another alleyway around  
5 the potato cellar, around the corral area?  
6 A. Yeah. There is an alleyway that comes right  
7 through here underneath the top. It's like -- it's for like  
8 -- there's feeders right in here so that in the wintertime  
9 you put your hay right there and just feed inside, so you  
10 don't have to come back out to feed them out here.  
11 Q. How wide is that alleyway that goes down through  
12 there?  
13 A. Down here?  
14 Q. No, the one underneath the shed, Tiffnie.  
15 A. It's just a couple of feet wide, maybe about as  
16 wide as this right here. It's not very wide.  
17 Q. How do you get into that alleyway?  
18 A. There's a door right here, and there is a door  
19 right here (indicating).  
20 Q. Okay. Put out to the side there "right door"  
21 and then draw an arrow over to those doors. Would you do  
22 that, please.  
23 A. Right where? Right here?  
24 Q. The entrance -- yeah, the exit for the south  
25 door.

1           A.       (Witness complied.)

2           Q.       And why don't you draw it up here a little

3 further so that -- now just draw an arrow.

4           A.       Right there. (Witness complied.)

5           Q.       Those were the doorways into the alley area?

6           A.       Yeah.

7           Q.       I believe that's all I need for now. You can go

8 back to the witness stand. We will take a break in just a

9 moment, Tiffnie. But let me ask you this: Your mother was

10 kind of a cowgirl, you said?

11          A.       Yes.

12          Q.       Had horses?

13          A.       Yes.

14          Q.       Did she have any kind of firearms?

15          A.       Yes, she did.

16          Q.       What kind of a weapon was that; do you know?

17          A.       She had a .22 pistol.

18          Q.       And can you describe that pistol for the jury?

19          A.       It's an automatic pistol, has a clip, and you

20 put the bullets in the clip and put the clip up inside the

21 gun, and there's a thing up on the back. You pull it, and

22 it makes the bullet go into the chamber.

23          Q.       Could that have been a semi-automatic?

24          A.       Yeah.

25          Q.       Had you ever shot that pistol?

1           A.     Yes, I have.

2           Q.     Where?

3           A.     All over the place.

4           Q.     Your mother shoot it?

5           A.     Yes, she has.

6           Q.     Did you have any other firearms around there?

7           A.     Yes.

8           Q.     What else?

9           A.     I have a .22 rifle.

10          Q.     What kind?

11          A.     A Savage.

12          Q.     Did you say what kind of pistol your mother's

13   is, or do you know?

14          A.     She has a Ruger.

15          Q.     A Ruger. Did -- did you ever do any shooting

16   around that area of El Rancho 93?

17          A.     Yes, we did.

18          Q.     Where would you shoot?

19          A.     Oh, out by the, the big cellar right over there

20   and out where all the machinery is and stuff like that and

21   out at the, where they keep the grain and stuff, shooting

22   birds.

23          Q.     Birds?

24          A.     Yeah.

25          Q.     Okay. Who would, who would go do that?

1           A.       Oh, all of us would. And then LaDonna has two  
2 boys that are 7 and 9, I think they were. And we'd take  
3 them out and let them shoot our guns and stuff 'cause they  
4 were really gun crazy. They liked to shoot and stuff.

5           Q.       And did Bart ever go with you and do this?

6           A.       Yeah. He took them. He took the boys quite a  
7 lot. He liked to play with them.

8           Q.       So specifically, do you remember ever doing any  
9 of that kind of shooting, shooting of birds and things in  
10 the area of the corral area or the feed bunks, the alleyway?

11          A.       Yeah.

12          MR. HAWS: Mr. Bailiff, could I get you to show  
13 State's Exhibit 64 A, and I believe it contains State's  
14 Exhibit 64, would you show that to the witness, please.

15          BY MR. HAWS:

16          Q.       Do you recognize State's Exhibit 64, Tiffnie?

17          A.       Yes, I do.

18          Q.       What is that?

19          A.       It's my mother's pistol.

20          Q.       Is it in a holster?

21          A.       Yes, it is.

22          Q.       Do you recognize the holster?

23          A.       Yes, I do.

24          Q.       Do you need to take it out of the holster in  
25 order to recognize it?

1 A. No. It's fine the way it is.

2 Q. Does it, is the clip there, also?

3 A. Yes, it is.

4 Q. And is that the clip that you were referring to?

5 A. Yes.

6 MR. HAWS: Okay. Thank you, Mr. Bailiff.

7 Your Honor, this might be a good time to take a  
8 break.

9 THE COURT: All right. Thank you, counsel. Tiffnie,  
10 we are going to take a short recess. Let me admonish you,  
11 during this recess not to discuss your testimony with  
12 anyone.

13 Ladies and gentlemen, I admonish you not to  
14 discuss any portion of this case between yourselves or  
15 anyone else. We will be in recess for a few moments.

16

17 (Recess)

18

19 THE COURT: Both counsel, have you surveyed the  
20 audience to determine if you have any witnesses in here?

21 MR. STOKER: Nobody I know.

22 MR. HAWS: Yes, your Honor.

23 THE COURT: Would you stipulate that all the jurors  
24 are present and in their proper chairs?

25 MR. HAWS: Yes, your Honor.

1 MR. STOKER: Yes, your Honor.

2 THE COURT: Okay. Tiffnie, I'll remind you, you are  
3 still under oath.

4 Counsel.

5 MR. HAWS: Thank you, Judge.

6 BY MR. HAWS:

7 Q. Tiffnie, you were relating earlier in your  
8 direct examination that you went out with your aunt and  
9 picked up your mother at the house, at the Borgeses'.

10 Do you recall the day before that, where you  
11 were and where your mother was and so on?

12 A. That I can remember right now, I can't.

13 Q. Did you see your mother at all before she went  
14 to work that day; do you recall?

15 A. Oh, yeah, I did. She went to Twin with my  
16 grandparents, with my grand mother.

17 Q. Did you see her after she came back from Twin  
18 with your grandmother?

19 A. Yes.

20 Q. And how long did you see her?

21 A. Just a little while. She had to go to work, so  
22 she came home before she went to work and showed us all the  
23 stuff she had gotten.

24 Q. And did you in fact see her go to work?

25 A. Yeah, I seen her leave.

1 Q. You saw her leave?  
2 A. Yeah.  
3 Q. What was she driving when she left?  
4 A. The car.  
5 Q. The white car?  
6 A. Yeah.  
7 Q. Did you have a birthday coming up then?  
8 A. Yes, I did.  
9 Q. Your birthday was coming up on the 4th of July?  
10 A. Yes.  
11 Q. Did your mother say anything to you about what  
12 she was going to get you for your birthday?  
13 A. She had gotten some nylon threadlike stuff that  
14 she was going to make me a bridle headset from, a bridle and  
15 a tiedown and some reins, she was going to make me some.  
16 Q. Did she actually show you whether she had bought  
17 some?  
18 A. Yes, she had.  
19 Q. What did she buy?  
20 A. Some blue and some gray, the nylon rope stuff.  
21 Q. Blue and gray nylon rope?  
22 A. Yeah.  
23 Q. Okay. Did you see whether she had -- what she  
24 did with that rope when she went to work?  
25 A. Yeah. She took it with her. She was going to



1 take it with her and start working on it.

2 Q. And so she took it with her when she got in the  
3 car?

4 A. Yes.

5 Q. After you picked your mother up, you and your  
6 aunt picked your mother up at the Borgeses, did you ever see  
7 your mother's knapsack again after that?

8 A. No, I didn't.

9 Q. What did she use to carry her things around in  
10 after that, after, after she didn't have her knapsack?

11 A. Oh, she went and borrowed a purse from my aunt  
12 Margene, a leather purse.

13 Q. Can you describe that purse?

14 A. Yeah, it had, I think, one pocket inside, had  
15 two straps and in -- outside pocket with a snap on it. It  
16 said something like Roughrider or something like that on the  
17 other side.

18 Q. Showing you State's Exhibit Number 74, is that  
19 the purse you're referring to?

20 A. Yes, it is.

21 Q. The right color?

22 A. Yes, it is.

23 Q. Roughrider?

24 A. Yes, sir.

25 MR. HAWS: The State would move the admission of

1 State's Exhibit 74, your Honor.

2 THE COURT: Mr. Stoker.

3 MR. STOKER: No objection.

4 THE COURT: State's Exhibit 74 may be admitted. I  
5 will instruct the clerk to so mark it.

6

7 (State's Exhibit 74 admitted.)

8

9 BY MR. HAWS:

10 Q. Now, Tiffnie, you said that your mother did have  
11 a pistol, a Ruger pistol; is that correct?

12 A. Yes.

13 Q. Where did she usually have that pistol?

14 A. Either in a backpack or on the bed. The -- we  
15 have a great big headboard on my waterbed, and we left it on  
16 that.

17 Q. Do you know whether your mother had her pistol  
18 after her car was gone?

19 A. Yes, she did.

20 Q. You still saw it even after the car was gone?

21 A. Yeah.

22 Q. Where did she have it then?

23 A. On the bed.

24 Q. Now, you say the bed. You described that as a  
25 waterbed?

1           A.       Yes, it is.

2           Q.       Whose bed was it?

3           A.       It's mine.

4           Q.       Who slept in it?

5           A.       Me and my mom.

6           Q.       You and your mother?

7           A.       Yes.

8           Q.       Were you and your mother sharing that bed during

9 the time, during the month of June?

10          A.       Yes.

11          Q.       Leading up to the 1st of July?

12          A.       Yes, we were.

13          Q.       Let's go back, now, Tiffnie, to the 1st of

14 July. You described your mother taking a bath, getting

15 dressed, and going out to use the telephone. Then I believe

16 you indicated that she came in and wanted to know who had

17 turned the horses out?

18          A.       Yes.

19          Q.       Is that correct?

20          A.       Yes.

21          Q.       What did you say when she asked who had turned

22 the horses out?

23          A.       I told her that I hadn't and I didn't think Tira

24 had but I would go out and put them up if she wanted me to.

25          Q.       Were you dressed at that time?

1 A. No, but I had a pair of pajamas on.  
2 Q. But she was dressed?  
3 A. Yeah.  
4 Q. Did she say anything to you then?  
5 A. No. She just said that she would do it since  
6 she was dressed and up already.  
7 Q. Did she in fact leave?  
8 A. Yes, she did.  
9 Q. She went out of the room?  
10 A. Yes.  
11 Q. Did you remain there in the bedroom?  
12 A. Yes, I did.  
13 Q. Were you on the bed?  
14 A. Yes, I was.  
15 Q. And were you still reading?  
16 A. Yes, I was.  
17 Q. Was Tiffnie -- or pardon me. Was Tira still in  
18 the bathtub?  
19 A. Yes, she was.  
20 Q. How long was your mother gone?  
21 A. I don't know. I was reading my book. I didn't  
22 even look at the clock or anything. She wasn't gone very  
23 long.  
24 Q. What's the next thing you remember, Tiffnie?  
25 A. Was hearing gunshots.

1 Q. You heard some gunshots?  
2 A. Yes, I did.  
3 Q. Can you describe those gunshots for the jury,  
4 please?  
5 A. I just heard -- I was laying on the bed, and I  
6 heard gunshots, and they were, just sounded like ordinary  
7 gunshots. They were just ordinary gunshots.  
8 Q. Well, were they real loud, or were they kind of  
9 soft? Can you describe them any further than just gunshots?  
10 A. They just sounded like a .22 shot.  
11 Q. You had heard .22 shots before?  
12 A. Yes.  
13 Q. I think at one time you described that as an  
14 airy sound, an airy shot?  
15 A. Yeah, yeah.  
16 Q. Is that how you would describe it?  
17 A. Yes.  
18 Q. Do you know how many shots you heard? Were you  
19 able to count them?  
20 A. No, I couldn't count them.  
21 Q. Do you have an approximation?  
22 A. Oh, I don't know. I -- it just -- it was really  
23 fast, shots were fast and together. I don't know how many  
24 there was really.  
25 Q. Do you -- okay. That's good enough. Do you

1 remember hearing anything else?

2 A. I heard her scream.

3 Q. You heard your mother scream?

4 A. Yes.

5 Q. What did you do, Tiffnie?

6 A. I jumped out of bed and grabbed my mom's gun and

7 ran out to the barn.

8 Q. Where was your mom's gun?

9 A. In her purse.

10 Q. And this is the Ruger you're talking about?

11 A. Yes.

12 Q. That you were shown earlier?

13 A. Yeah.

14 Q. You grabbed the gun, pistol?

15 A. Yes.

16 Q. And you went where?

17 A. Out to the barn, out to the loafing shed.

18 Q. Is that the area you've described as the

19 alleyway out by the corrals?

20 A. Yes, it is.

21 Q. Tiffnie, when you got to the alleyway, what did

22 you see? Would you describe that for the jury, please?

23 A. I seen my mom laying, sitting in the alleyway,

24 and Jamie was over her holding the gun, holding his gun down

25 at her.

1 Q. What kind of a gun was it that he was holding?  
2 A. It was a rifle, .22 rifle.  
3 Q. Where was it pointing?  
4 A. At her.  
5 Q. The barrel was pointed at her?  
6 A. Yes, it was.  
7 Q. Would you describe for the jury how she was  
8 sitting on the ground?  
9 A. She had her legs away, from behind of, sideways  
10 in the alleyway, and she was sitting straight up, and she  
11 had her hand on her shoulder and was kind of turned this way  
12 looking at me over her shoulder this way.  
13 Q. Now, which hand did she have on her shoulder?  
14 A. Her right hand.  
15 Q. Her right hand on her left shoulder?  
16 A. Yes.  
17 Q. The way you're showing here on the stand?  
18 A. Yes.  
19 Q. Where was her left hand or her left arm?  
20 A. It was kind of behind her, looked like, like she  
21 was propping herself up or something like that.  
22 Q. Could you see whether she was hurt?  
23 A. She had blood on her hands. I could see the  
24 blood on her hands, and I can kind of remember seeing blood  
25 on her leg, on her left leg.

1 Q. How close was Mr. Charboneau standing to your  
2 mother?

3 A. Just right, almost over the top of her, kind of  
4 at, between her knees and her feet, over that close.

5 Q. Now, when you say he was standing over her, were  
6 his legs straddled over both of hers? Do you know what I  
7 mean by straddled?

8 A. Yeah. His one leg was back farther than the  
9 other leg, so it could have been over the other, her, one of  
10 her foot, one of her feet. But that is the -- kind of like  
11 that.

12 Q. How close was the rifle to your mother, the  
13 barrel of the rifle, to your mother?

14 A. Just a couple inches away from her, couple,  
15 maybe a foot. It was just not even that far. It was just  
16 right down in front of her.

17 Q. Now, where were you standing when you saw that?

18 A. At the door of the, of the alleyway.

19 Q. How were you standing there?

20 A. I was standing with one of my shoulders showing  
21 and the other one not. I wasn't standing full ways in the  
22 door.

23 Q. Did you have the pistol with you still?

24 A. Yes, I did.

25 Q. From the position you were standing in, could



1 the pistol have been visible to anybody down the alley where  
2 Mr. Charboneau was?

3 A. It could have been, yeah.

4 Q. Did anybody say anything, Tiffnie?

5 A. Yeah. I made -- I must have made some noise  
6 when I came up to the door 'cause they both looked at me,  
7 and I told him to just leave and go away; and he told me  
8 that he would take her to the doctor. And I asked him again  
9 if he would leave, and then they both told me to go away.

10 Q. How did you ask him to leave? Do you recall  
11 your words? Try to be as exact as possible.

12 A. I don't, can't remember exactly. I just -- I  
13 was asking him if he would leave. I didn't really tell him  
14 to leave. I was just asking him if he would leave.

15 Q. Did you say what you would do if he didn't  
16 leave?

17 A. Yeah. I told him that I was going to call the  
18 police, and he told me to go ahead.

19 Q. What words did Mr. Charboneau use when he told  
20 you to leave?

21 A. Told me to get out of there.

22 Q. What was his tone of voice when he said that?

23 A. He was kind of angry. It was loud. Wasn't  
24 yelling. It was just loud.

25 Q. And what did your mother say?

1           A.       She asked me if I -- to leave, too.

2           Q.       What was her tone of voice?

3           A.       Like she was scared. She was kind of shaky.

4           Q.       What did you do then, Tiffnie?

5           A.       I ran to the shop right across from the, from

6 the cellar and called the police station, and told them that

7 Jamie had just shot my mom.

8           Q.       And after you made that call, where did you go

9 then?

10          A.       I ran and got my little sister out of the

11 bathtub and made her get dressed, and I got dressed.

12          Q.       Now, when you say "get dressed," how did you get

13 dressed?

14          A.       I put on a pair of Bart's pants and a western

15 shirt and my thongs.

16          Q.       How long did that take you?

17          A.       Just not very long at all. We was quick.

18 Everything was just laying on the floor, so we just grabbed

19 what was laying on the floor.

20          Q.       What did you do then?

21          A.       We heard more shots, and so me and Tira ran

22 outside and behind our sheep wagon and started calling to

23 our mom.

24          Q.       You heard more shots?

25          A.       Yeah, while we was inside.

1 Q. As you were getting dressed?

2 A. Yeah.

3 Q. Can you describe those shots for the jury?

4 A. They were fast, and they sounded just like the  
5 other ones. They were fast. And I didn't hear anything  
6 else after the shots. It was just silence after the shots.

7 Q. So after you heard the shots, you and Tira went  
8 out behind the sheep wagon; is that what you said?

9 A. Yeah.

10 Q. Where was the sheep wagon located, Tiffnie?

11 A. Just right in front of our house on the other  
12 side of the fence, and we had a fence going across our yard  
13 and it was just right on the other side of the fence in  
14 front of the house.

15 Q. And what did you do behind the sheep wagon?

16 A. We was calling to my mom, and Tira -- we was  
17 asking Jamie to just leave and leave us alone.

18 Q. How were you and Tira? What was your emotional  
19 state at that time?

20 A. We were scared. We were both -- we both started  
21 to cry, and we was just wanting him to leave so we could go  
22 to her.

23 Q. Could you see the alleyway from the sheep wagon?

24 A. You can see to it, but you can't see down it.

25 Q. But you could see over to the doorway into the

1 alley?

2 A. Yes, you can.

3 Q. Did you see anything over there?

4 A. No.

5 Q. How long did you stay behind the sheep wagon?

6 A. Not very long. We were just there for a couple

7 of seconds.

8 Q. Did anything -- did anything happen, Tiffnie,

9 while you were standing behind the sheep wagon?

10 A. Yes, it did.

11 Q. Would you tell the jury what happened, please?

12 A. I had the gun in my hand, and I was shaking

13 really hard, and I fired one shot behind my back, and it

14 scared me. So I ran into the house and hid the gun

15 underneath some clothes in a closet in a clothes hamper.

16 And then I ran back out to the sheep wagon. Well, then I

17 ran all the way to the barn.

18 Q. And was Tira with you?

19 A. No. I made Tira stay behind the sheep wagon.

20 Q. Until you got to the alleyway?

21 A. Until I got to the alleyway. And then I didn't

22 see him. And she was laying, and I ran down to her, and

23 Tira was not very far behind me.

24 Q. She was right behind you?

25 A. She was a ways away from me, but she wasn't --

1 she wasn't as fast as I was getting down there.

2 Q. Why did you hide the gun, Tiffnie?

3 A. Because I was scared, and I didn't want him to  
4 get it.

5 Q. Did you hide anything else?

6 A. Yeah, I hid the keys to the pickup.

7 Q. Now, was the pickup in the driveway at that  
8 time?

9 A. Yes, it was.

10 Q. And whose pickup was that?

11 A. It's my grandpa's pickup.

12 Q. Tiffnie, would you come down to State's Exhibit  
13 Number 6. Step up here to the exhibit, if you would,  
14 please, Tiffnie.

15 Would you please take this green marker and  
16 point out for the jury, please, where the fence was at  
17 between your house and the driveway. Could you do that?

18 A. Fence was right here, right like that  
19 (indicating).

20 Q. Now, you've put a mark on there?

21 A. Yeah, mark is the fence.

22 Q. Now, put two little lines to show where the gate  
23 was.

24 A. Gate's right here.

25 Q. And put the, show the door, put a little X on

1 the door that you came out of when you came out of your  
2 house.

3 A. Door is right here (indicating).

4 Q. Okay. Now, initial those, would you, just put  
5 your initial by that X.

6 Now, is the sheep wagon shown in that picture?

7 A. I don't think so.

8 Q. Okay. Would you draw a little box or a little X  
9 -- let's take a little box -- in about where that sheep  
10 wagon was located that you're talking about.

11 A. Sheep wagon, right about here (indicating).

12 Q. Is that box actually larger than the sheep  
13 wagon?

14 A. Yeah, yeah, yes, it is.

15 Q. Cut that line off and use that line and that  
16 line right there.

17 A. (Witness complied.)

18 Q. And from there you could see over to the  
19 entrance to the alleyway?

20 A. Yeah.

21 Q. And is that where you have the arrow labeled  
22 "door"?

23 A. Yes.

24 Q. So put another little X back there at the back  
25 of the sheep wagon where you and Tira were standing.

1           A.       I was standing right here, and Tira was standing  
2 right there. I was standing so that I could see around the  
3 corner of the sheep wagon into the, over to the alley.

4           Q.       Into the alleyway?

5           A.       Yeah.

6           Q.       Okay. You can go ahead and take the stand  
7 again, Tiffnie.

8                   Tiffnie, I'm showing you what's been marked for  
9 identification as State's Exhibit Number 101. Is that a  
10 photograph?

11          A.       Yes, it is.

12          Q.       Would you look at that photograph, please. Does  
13 that show anything that you have described in your  
14 testimony?

15          A.       Yes, it does.

16          Q.       What does it show?

17          A.       It shows there our sheep wagon, and it shows the  
18 fence and our, the door of our house.

19          Q.       The fence and the door that you just got through  
20 labeling on State's Exhibit Number 6?

21          A.       Yes.

22          Q.       Is that -- does that picture show it accurately  
23 as you remember it --

24          A.       Yes.

25          Q.       -- on that day, the 1st of July, 1984?

1 A. Yes.

2 Q. Let me show you State's Exhibit Number 102. Is  
3 that another photograph?

4 A. Yes, it is.

5 Q. Would you state whether you recognize what's  
6 shown in that photograph?

7 A. The side of our sheep wagon and the fence and  
8 the door.

9 Q. Different view than --

10 A. Yeah.

11 Q. Than in State's 101?

12 A. Kind of.

13 Q. Does that photograph accurately show it as you  
14 remember it on the 1st of July, 1984?

15 A. No, the pickup was right here (indicating).

16 Q. There was a pickup that would have blocked out  
17 the view to the door?

18 A. Yeah.

19 Q. But aside from that, does it show the  
20 relationship between the sheep wagon the fence and the door?

21 A. Yes.

22 Q. Does it show it accurately?

23 A. Yes.

24 Q. State's Exhibit 103, would you state what it  
25 shows?



1           A.       The back of the sheep wagon and the fence and  
2 LaDonna Jones' house.

3           Q.       So that door shown in 103 is the back door of  
4 LaDonna Jones' house?

5           A.       Yes, it is.

6           Q.       So this is a different perspective than shown in  
7 101 and 102?

8           A.       Yes.

9           Q.       Does it accurately show that area as you  
10 remember it on the 1st of July, 1984?

11          A.       Yes.

12          Q.       And State's Exhibit Number 104, is that another  
13 color photograph?

14          A.       Yes, it is.

15          Q.       Do you know what it shows?

16          A.       It's the back door of the sheep wagon.

17          Q.       Okay. And is -- does that show the area where  
18 you've testified that you and Tira were standing?

19          A.       Yes, it does.

20          Q.       Does it accurately show it as you remember it on  
21 the 1st of July, 1984?

22          A.       Yes, it does.

23          MR. HAWS: Your Honor, I move the admission of State's  
24 Exhibit 101 through 104.

25          MR. STOKER: Your Honor, may I ask a couple questions

1 in aid of objection?

2 THE COURT: You may.

3

4

5 VOIR DIRE EXAMINATION BY MR. STOKER:

6 Q. Tiffnie, do you know when these pictures were  
7 taken, where they were taken, when they were taken?

8 A. No, I don't.

9 Q. Do you know who took them?

10 A. No, I don't.

11 MR. STOKER: Your Honor, with the representation and  
12 stipulation by counsel that these pictures were taken July  
13 11th, 1984, by Officer Coats of the Jerome sheriff's office,  
14 that they depict the scene as of July the 11th, I will I  
15 have no objection to it being admitted, with that  
16 understanding.

17 THE COURT: All right. Fine. Thank you. State's  
18 Exhibits 101 through 104, inclusive, may be admitted, and I  
19 instruct the clerk to mark them as such.

20

21 (State's Exhibits 101, 102, 103, 104 admitted.)

22

23

24

25

1 DIRECT EXAMINATION CONTINUED BY MR. HAWS:

2 Q. While the clerk is marking those, let me ask you

3 this: You've examined these pictures, 101 through 104?

4 A. Yes.

5 Q. Do they show the sheep wagon in any different

6 position than you remember it on the 1st of July?

7 A. No.

8 Q. It doesn't appear to have been moved?

9 A. No.

10 Q. Showing you again State's Exhibit Number 101,

11 would you hold that up and show the jury. And perhaps you

12 better come down here, Tiffnie, so they can see it. It's a

13 fairly small photograph.

14 Would you show the jury the back door of your

15 place and the side of the sheep wagon that you were standing

16 on, please.

17 A. This is our back door right here, and I was

18 standing on this side of the sheep wagon.

19 Q. At the back of the sheep wagon?

20 A. Yeah, the back like half of me was sticking out

21 so I could see.

22 THE COURT: Were all of you jurors able to see that.

23 MR. SANDERS: If she could tilt it forward.

24 THE WITNESS: Do you want me to show it again? Right

25 here is our back door and I was standing on this side of the

1 sheep wagon.

2 BY MR. HAWS:

3 Q. While you're standing here, would you also  
4 explain State's Exhibit 103 to the jury?

5 A. Okay. Right here, this would be right here.  
6 This is where I was, I was standing. My little sister was  
7 standing right here. Could you see?

8 Q. And it shows the fence that you were talking  
9 about?

10 A. Yeah. Right here is our fence, goes in front of  
11 the yard.

12 Q. You may go back to the witness stand. And I am  
13 going to ask you to take a pen and mark on the ground the  
14 approximate area where you were standing behind the sheep  
15 wagon.

16 A. I was standing right about there (indicating).

17 Q. You put an X on State's Exhibit Number 103?

18 A. Yes.

19 Q. Okay. I am handing you now what's been marked  
20 for identification as State's Exhibit Number 106. Is that a  
21 color photograph?

22 A. Yes, it is.

23 Q. Do you recognize what 106 shows?

24 A. Yes, I do.

25 Q. What does it show?

1 A. It shows the front, the front section, the front  
2 door of the alleyway.

3 Q. And approximately where would that have been  
4 taken from, this picture have been taken from?

5 A. Probably right around where the back of the  
6 sheep wagon is.

7 Q. This photograph is taken at a different time of  
8 the year though; is that correct?

9 A. Yes.

10 Q. Does it show the approximate distance and how  
11 the doorway looked through the alleyway?

12 A. Yes, it does.

13 Q. As you remember it on the 1st of July, 1984?

14 A. Yes.

15 MR. HAWS: I would move the admission of State's 106  
16 for illustrative purposes.

17 MR. STOKER: Your Honor, with the understanding that  
18 this picture was taken by Investigator Carr February 20th,  
19 1984, or thereabouts and it being offered for illustrative  
20 purposes only I have no objection.

21 THE COURT: Thank you. That was 106?

22 MR. HAWS: Yes, your Honor.

23 THE COURT: State's Exhibit 106 may be admitted,  
24 instruct the clerk to mark it as such.

25 (State's Exhibit 106 admitted.)

1 BY MR. HAWS:  
2 Q. Showing you State's Exhibit Number 30, is that  
3 another color photograph?  
4 A. I can't see the front.  
5 Q. I'm sorry.  
6 A. Yes.  
7 Q. Is that another color photograph?  
8 A. Yes.  
9 Q. I was testifying. It is another color  
10 photograph?  
11 A. Yes.  
12 Q. What does it show, if anything, that you  
13 recognize?  
14 A. It shows the door to the alleyway.  
15 Q. And does that show the doorway to the alleyway  
16 where you were standing as you've already testified,  
17 Tiffnie?  
18 A. Yes.  
19 Q. And is that how it looked on the 1st of July,  
20 1984?  
21 A. Yes.  
22 Q. Does it show it accurately?  
23 A. Yes, it does.  
24 Q. And showing you State's Exhibit Number 31, is  
25 that a color photograph?

1 A. Yes, it is.

2 Q. What does it show?

3 A. It shows the alleyway from inside.

4 Q. Shows the alleyway from inside the alleyway?

5 A. Yes.

6 Q. That would be down underneath the shed roof?

7 A. Yes.

8 Q. And what does it -- does it show the doorway?

9 A. Yes, it does.

10 Q. How far into the alleyway -- strike that.

11 Does that photograph, State's Exhibit 31, show

12 the approximate relationship between the, or distance,

13 between the doorway where you were standing and where you

14 saw Mr. Charboneau as you've already testified?

15 A. I think so. It might -- I think so.

16 Q. You can't state for sure?

17 A. No, I can't.

18 Q. But it does show the doorway to the alleyway

19 from the inside; is that correct?

20 A. Yes, it does.

21 Q. And it shows it as you remember it on the 1st of

22 July, 1984?

23 A. Yes.

24 MR. BAWS: Move the admission of State's Exhibits 30

25 and 31, your Honor.

1 MR. STOKER: Your Honor, with the understanding that  
2 Exhibits 31, 30 and 31, were taken on July 1st, 1984, by  
3 either Officer Webb or Officer Clark of the sheriff's  
4 office, we would have no objection.

5 THE COURT: Thank you. State's Exhibits 30 and 31 may  
6 be admitted. I instruct the clerk to so mark them.

7

8 (State's Exhibits 30, 31 admitted.)

9

10 BY MR. HAWS:

11 Q. While the clerk is marking those exhibits,  
12 Tiffnie, let me ask you if you, ask you about State's  
13 Exhibit 34. Another color photograph; is that correct?

14 A. Yes, it is.

15 Q. Can you tell what the subject of that color  
16 photograph is?

17 A. It's a lawn chair and the in -- Well, it's the  
18 tack room, part of the -- of the shed, of the alleyway.  
19 There was a little place for to you put your saddles and  
20 bridles and stuff in out in the barn.

21 Q. Is it actually a room? You said "tack room." Is  
22 it actually a room?

23 A. No, it's not a room. It's just a little space.

24 Q. Where is this located in relationship to the  
25 door into the alleyway?



1           A.       Just right inside of the door.

2           Q.       Does it accurately show it as you remember it on  
3 the first of July, 1984?

4           A.       I didn't notice it. I didn't even look.

5           Q.       Okay. You didn't look at that area?

6           A.       No, I didn't.

7           Q.       Okay. Now, Tiffnie, I wonder if I could just  
8 get you to show these two photographs to the jury to explain  
9 where you were standing when you ran to the alley door.

10          THE COURT: Counsel, identify them by number.

11          MR. HAWS: Yes, we are referring now, your Honor, to  
12 State's Exhibits --

13          THE WITNESS: Number 30 is the first one.

14          MR. HAWS: 30 and 31, if I'm not mistaken.

15          THE WITNESS: I was standing right here on this side  
16 of the door with half of my shoulder inside and half of me  
17 not inside, so that I could see. But my head was in but the  
18 rest of me wasn't. Half of me was and half of me wasn't.  
19 Standing right here. And on this side, this is from the  
20 inside looking out, I was standing on this side right here,  
21 on this side. Can you see? Right there (indicating).

22          BY MR. HAWS:

23          Q.       Okay. Thank you, Tiffnie. You can go back to  
24 the stand.

25                 Tiffnie, how much time went by, approximately,

1 if you can give us an approximation, from the time that you  
2 first got to the telephone and made the call to the  
3 sheriff's office and told them that the defendant Mr.  
4 Charboneau had just shot your mom? How much time from then  
5 until you went running back down to the alley?

6 MR. STOKER: Your Honor, I would object to that  
7 question as not having a sufficient foundation, basis upon  
8 which the witness can state an opinion or conclusion on.

9 MR. HAWS: Well, may I respond to that, your Honor?

10 THE COURT: Yes.

11 MR. HAWS: I don't know what foundation problems  
12 defense sees there. She's already testified to that entire  
13 sequence, and all we're asking for now is for her to  
14 estimate the time she's already testified to. So in fact  
15 ample foundation has been laid. She's shown the date, time  
16 place, who was there and that she experienced all that.  
17 Now, it's simply an estimation of time.

18 THE COURT: Counsel.

19 MR. STOKER: The problem I'm having is with the term  
20 "estimation." That sounds like a guess. If she knows,  
21 that's fine; but the form of the question it was asked, does  
22 not even suggest that she knows the time or how she would  
23 know.

24 THE COURT: Well, I will sustain the objection to that  
25 extent. Lay a little more foundation as to what is she

1 using for the basis of her estimation.

2 MR. HAWS: Yes, your Honor.

3 BY MR. HAWS:

4 Q. Tiffnie, when you first heard shots, did you  
5 bother to look at the clock?

6 A. No, I didn't.

7 Q. Did you have a watch on?

8 A. No, I don't, didn't.

9 Q. And when you went through this whole exercise,  
10 went from the bedroom, down the alleyway, to the telephone  
11 and so on, into the house, you weren't looking at a clock;  
12 is that correct?

13 A. Correct.

14 Q. Do you have, based upon your common knowledge  
15 and common sense, do you have an approximation of how much  
16 time went by?

17 A. No, I don't.

18 Q. Did it go quickly or was it -- take a long time?

19 A. It went very -- it went very quickly.

20 Q. Can you give us even any parameters, any  
21 ballpark figures there of how much time we're talking about?

22 A. No, I don't know.

23 Q. Okay. Now, Tiffnie, when you got, when you ran  
24 down to the alleyway, I think you indicated Tira was coming  
25 right behind you; is that right?

1           A.     Yeah.

2           Q.     What did you see when you got in the alleyway,  
3 Tiffnie?

4           A.     Just my mom.

5           Q.     Where was she?

6           A.     She was laying in the alley.

7           Q.     How was she laying?

8           A.     She was just laying on her back with her arms up  
9 over her head.

10          Q.     Was Mr. Charboneau there?

11          A.     No, I didn't see him.

12          Q.     Did you see any weapons, any rifle or anything?

13          A.     No, I didn't.

14          Q.     What did you do? Would you explain to the jury  
15 what you did when you got down there to your mom?

16          A.     When I got down to her, I picked her head up and  
17 was looking into her eyes and, and telling her how much I  
18 loved her and that everything would be okay. And then like  
19 one minute she was looking at me and the next minute she  
20 wasn't, and I knew she was dead so I closed her eyes and put  
21 her head back down.

22                 And then my little sister came up and touched  
23 her on the cheek and we both left together out to call --  
24 Well, Tira ran ahead of me and she ran to call an ambulance  
25 and then we both, when I got up there, we both called my

1 grandparents together.

2 Q. What condition was your mother's clothing in,  
3 Tiffnie?

4 A. Oh, her shirt was pulled down so you could see  
5 half of one of her breasts, so I pulled it up.

6 Q. Do you remember which breast it was Tiffnie?

7 A. I think it was her left breast.

8 MR. HAWS: No further questions.

9 THE COURT: Would you prefer to take a little early  
10 break for lunch than to start your cross examination?

11 MR. STOKER: I think it might assist with Tiffnie's  
12 composure also, your Honor, so I would.

13 THE COURT: We are going to take our noon recess.  
14 Tiffnie, again I do admonish you that during this noon  
15 recess do not discuss the testimony or any part of it with  
16 anyone else.

17 Ladies and gentlemen of the jury, I again  
18 admonish you not to discuss any portion of this case between  
19 yourselves or any other person; and again during the recess  
20 if there happen to be any news reports, television, radio or  
21 newspaper on this case, refrain from listening to any  
22 portion of it.

23 Does this cause any problems with any of you  
24 people? I know I've been running on schedule, 1:30. If we  
25 leave early maybe we can start at 25 after.

1 (Noon recess)

2

3 THE COURT: Counsel, again I will ask each of you to

4 survey the audience to determine if you have any witnesses

5 in the courtroom.

6 MR. HAWS: No, your Honor.

7 MR. STOKER: No, your Honor.

8 THE COURT: Okay. Madam Clerk, call the roll of the

9 jury. As your name is called, indicate your attendance by

10 saying, "Here."

11 THE CLERK: Mark Wade.

12 MR. WADE: Here.

13 THE CLERK: Barbara Pierce.

14 MS. PIERCE: Here.

15 THE CLERK: John Keller.

16 MR. KELLER: Here.

17 THE CLERK: Vanessa Olson.

18 MS. OLSON: Here.

19 THE CLERK: Vonley Boyenger.

20 MR. BOYENGER: Here.

21 THE CLERK: Sara Turk.

22 MS. TURK: Here.

23 THE CLERK: David Porter.

24 MR. PORTER: Here.

25 THE CLERK: Linda Capps.

1 MS. CAPPS: Here.  
2 THE CLERK: Robin Sanders.  
3 MR. SANDERS: Here.  
4 THE CLERK: Kathleen Spencer.  
5 MS. SPENCER: Here.  
6 THE CLERK: Teresa Novak.  
7 MS. NOVAK: Here.  
8 THE CLERK: Fred Strickler.  
9 MR. STRICKLER: Here.  
10 THE CLERK: Neal Bryson.  
11 MR. BRYSON: Here.  
12 THE CLERK: Oma Jeffries.  
13 MS. JEFFRIES: Here.  
14 THE COURT: Counsel, do you stipulate that all the  
15 jurors are present and in their proper chairs?  
16 MR. HAWS: Yes, your Honor.  
17 MR. STOKER: Yes, your Honor.  
18 THE COURT: Recall Tiffnie Arbaugh to the stand,  
19 please. Tiffnie, I'll remind you, you are still under  
20 oath.  
21 Mr. Haws, you had concluded your direct  
22 examination?  
23 MR. HAWS: Yes, your Honor.  
24 THE COURT: Mr. Stoker, you may cross-examine.  
25 MR. STOKER: Thank you.

1 CROSS EXAMINATION BY MR. STOKER:

2 Q. Do you prefer to go by the name of Arbaugh or  
3 Halman?

4 A. Arbaugh.

5 Q. Miss Arbaugh, you and I have never talked  
6 before, have we?

7 A. No.

8 Q. And it's true, isn't it, that you have not  
9 talked to any of the defense investigators or the defense  
10 attorneys?

11 A. Yes.

12 Q. Is there a reason for that?

13 A. No.

14 Q. You've been asked to do that, weren't you,  
15 before we came to trial, weren't you?

16 A. Not that I know of.

17 Q. You never were asked to do that?

18 A. Not personally, no.

19 Q. Is there anything about the testimony that you  
20 have given to this jury today that you want to change or  
21 correct at this point?

22 A. No.

23 Q. You're satisfied that everything you have told  
24 in this courtroom is the truth?

25 A. Yes.



1 Q. How long did your mother know Jamie Charboneau?  
2 A. I don't know. Maybe two years, a year, two  
3 years. I don't know.  
4 Q. Where did they meet at?  
5 A. In Mountain Home.  
6 Q. And do you recall the circumstances under which  
7 they met?  
8 A. No.  
9 Q. Were you living with your mother at that time?  
10 A. Yeah.  
11 Q. Where were you living? Where was the physical  
12 location?  
13 A. In Prairie, Idaho.  
14 Q. And what was your mother doing at that time?  
15 A. Nothing.  
16 Q. Were you going to school?  
17 A. Yes, I was.  
18 Q. Where did you go to school at?  
19 A. In Mountain Home.  
20 Q. When were your mother and Jamie married?  
21 A. I don't remember.  
22 Q. Do you know the year they were married?  
23 A. In '83 or '84. I don't know.  
24 Q. Did you go to the wedding?  
25 A. No, I didn't.

1 Q. Did they have a wedding ceremony as such, or was  
2 it a judge type of marriage?  
3 A. It was a judge type thing.  
4 Q. Where were they married at?  
5 A. I don't know.  
6 Q. When did -- you've testified that you did not  
7 live with your mother at El Rancho until late December or  
8 early January of '84; is that right?  
9 A. Right.  
10 Q. Okay. Where did you live before that?  
11 A. With my grandparents.  
12 Q. And that would be Mr. Arbaugh who was in court  
13 earlier?  
14 A. Yes.  
15 Q. And was that in Jerome?  
16 A. Yes, it was.  
17 Q. Why were you living with your grandparents?  
18 A. Because I was going to school at the time and I  
19 just lived with them when I went to school most of the time  
20 during high school.  
21 Q. And how long did you know Bart, have you known  
22 Bart?  
23 A. I've known him for two years.  
24 Q. Is he still a boyfriend of yours at this time?  
25 A. Yes, he is.

1 Q. Do you recall when you met him?  
2 A. Yes.  
3 Q. When was that?  
4 A. April 22nd two years ago.  
5 Q. That would be 1983?  
6 A. Yes.  
7 Q. Okay. Was your mother and Jamie married by that  
8 time?  
9 A. Not, no, not that I know of.  
10 Q. How old is Bart now?  
11 A. He's 20.  
12 Q. And where does he reside at?  
13 A. What was that?  
14 Q. Where does he reside at?  
15 A. In Jerome.  
16 Q. Doesn't live with you, I take it?  
17 A. No.  
18 Q. You've testified that you are generally aware  
19 that your mother filed for divorce against Jamie. Are you  
20 aware of when she filed?  
21 A. No, I'm not.  
22 Q. Are you aware of when she became divorced?  
23 A. No, I'm not.  
24 Q. Well, are you saying that you and her did not  
25 talk about that type of thing?

1           A.       No, we didn't.

2           Q.       Is it your recollection that Jamie and her  
3 separated in the early part of 1984?

4           A.       Yeah.

5           Q.       Do you remember the circumstances under which  
6 they separated?

7           A.       The first time, no.

8           Q.       Were you living with your mother at the time, at  
9 the same time that Jamie was living at El Rancho 93?

10          A.       No.

11          Q.       So they separated before you moved in; is that  
12 right?

13          A.       Yes.

14          Q.       Okay. Why did you go back to live with your  
15 mother at that point?

16          A.       Because I wanted to live with her.

17          Q.       And why didn't you want to live with her  
18 before?

19          A.       Because me and Jamie didn't get along very well  
20 so I stayed with my grandparents.

21          Q.       You would say it's a fair statement that you  
22 don't like Jamie?

23          A.       We don't get along.

24          Q.       Do you dislike him?

25          A.       What was that?

1 Q. Do you dislike him?  
2 A. Yes.  
3 Q. Did you dislike him before this incident  
4 involving the death of your mother?  
5 A. Yes.  
6 Q. Why did you dislike him?  
7 A. Because he was mean to her.  
8 Q. In what ways was he mean to her?  
9 A. He'd beat her up; he beat her up before. And  
10 when he would drink or anything, he'd get obnoxious and say  
11 rude things and stuff like that.  
12 Q. This happened during their whole marriage?  
13 A. Yes.  
14 Q. And on the other hand, I take it your mother was  
15 always easygoing?  
16 A. Yes.  
17 Q. There was no reaction between Jamie and her; is  
18 that what you're suggesting to the jury?  
19 A. Yeah.  
20 Q. Isn't it true that your mother shot Mr.  
21 Charboneau with this same pistol that we've put into  
22 evidence here?  
23 A. Yes, it is true, she did.  
24 Q. Shot him several times, didn't she?  
25 A. She shot him twice.

1 Q. And you consider that to be that your mother was  
2 always easygoing and never violent; is that what you're  
3 saying to the jury?

4 A. Just once, just that one time.

5 Q. You walked into the barn at the alleyway the  
6 first time, after you, her the first set of shots, you saw  
7 Mr. Charboneau standing over your mother?

8 A. Yes.

9 Q. What was he wearing?

10 A. What was he wearing? Pants and a shirt. I  
11 don't know. I can't remember it.

12 Q. Did he have a jacket on?

13 A. I can't remember.

14 Q. How far down the alleyway was he from the door?

15 A. Oh, I don't know exactly how far it was.

16 Q. Well, would you say more than ten feet?

17 A. Yeah.

18 Q. Less than a hundred?

19 A. Yes.

20 Q. Somewhere between the two?

21 A. Yes.

22 Q. When you walked into the barn the second time  
23 after Mr. Charboneau had left and your mother was laying  
24 there, which direction was she laying in?

25 A. Which direction? Her head was towards the

1 front, and her feet were towards, more towards the back.

2 Q. Okay. Now, when you say front and back, which--

3 A. Her head was towards me, and I was coming in the

4 front door, and her feet were towards the other way.

5 Q. When you came in the first time, who -- what

6 were the first words that were said to you?

7 A. I think they told me to leave, the first thing.

8 Q. Who told you to leave?

9 A. My mother and Jamie.

10 Q. You're saying that they said that at the same

11 time?

12 A. Yes, they did.

13 Q. Jamie pointed the gun at you, didn't he?

14 A. Yes, he did.

15 Q. Did you think he was going to shoot you?

16 A. I didn't know.

17 Q. He didn't fire any shots at that time, did he?

18 A. What?

19 Q. He didn't fire any shots, did he?

20 A. No, he didn't.

21 Q. Isn't it true that you did not see him fire any

22 shots at all?

23 A. No, I didn't see him.

24 Q. How many shots did you hear the first time?

25 A. I don't know.

1 Q. So are you saying it could have been just one or  
2 two?  
3 A. No, it was more than that.  
4 Q. Could it have been more than 20?  
5 A. No.  
6 Q. You have no recollection, Ma'am, of how many  
7 shots you heard?  
8 A. No.  
9 Q. Do you recall the layout of the house you were  
10 living in at the time?  
11 A. Yes.  
12 Q. Could you draw a diagram of that for the jury?  
13 A. Yeah.  
14 MR. STOKER: If it please the Court, if I could have  
15 the witness step to the diagram board there and if we can  
16 give her a marker.  
17 THE COURT: Yes, Tiffnie, you may step down. Step  
18 over to the board.  
19 BY MR. STOKER:  
20 Q. Miss Arbaugh, all I'm interested in is a diagram  
21 of the house at El Rancho that you were living in showing  
22 the rooms and the entrance doors.  
23 A. Okay.  
24 Q. Draw it as big as you need to on this piece of  
25 paper, if you would.



1           A.       There was a -- there was a porch right here.  
2       And right here there's the door that I used to go outside.  
3       It's the front door, it was -- the back door and the steps  
4       and everything that we used, and here was a -- and this  
5       right here was the kitchen area, and right here was the  
6       first bedroom. This is my little sister's bedroom. And  
7       then right here is the bathroom, and then here was the room  
8       that me and my mom shared. And this was the living room  
9       area right here. And here was our kitchen table.

10          Q.       Could you label the two bedrooms on that  
11       diagram?

12          A.       (Witness complied.)

13          Q.       And label the front door, also.

14          A.       Front door's right here (indicating).

15          Q.       Is there a back door, then, on the porch?

16          A.       Yeah, it's right here (indicating).

17          Q.       Okay. Why don't you -- could you write "back  
18       door" on that, please.

19          A.       (Witness complied.)

20          Q.       And then write "front door" on the other one.

21          A.       (Witness complied.)

22          Q.       Are there any windows on any of the bedrooms?

23          A.       Yeah. There's a window right here in Tira's  
24       room. There was a window right here in Mom's room and a  
25       window right here. And there was -- I guess the porch comes

1 more up this way, I guess, 'cause there's a window right  
2 here outside. This is not right it's like that and that's  
3 the back door. (Indicating)

4 Q. So in other words, on the right side of your  
5 diagram there's actually a kind of a porch off to the right  
6 side?

7 A. It's not a porch. It's opened and stuff. It's  
8 just -- there's where you can walk up, and there's a side of  
9 the house right here, and there's a little table there and  
10 then the steps; and this was all opened on the yard.

11 Q. Okay. Where is the back door, then?

12 A. It's right here, right inside that little thing.

13 Q. If you would return to the witness stand, then.

14 Now, is it your testimony that you were on the  
15 waterbed in the room that you have labeled "Mother and  
16 Tiffy's"?

17 A. Mine and mother's, yeah.

18 Q. Is that -- was the window to that bedroom  
19 opened, either one of them?

20 A. Yes, it was.

21 Q. Were they both opened?

22 A. No, I don't think so. I think just the one.

23 Q. Which one?

24 A. The one right below, looking out into the yard.

25 Q. Would that be south, the one closest to the

1 barn?

2 A. Yeah.

3 Q. And did you know whether the window in Tira's

4 bedroom was opened?

5 A. Not the bottom one but the side one was.

6 Q. And do you know which side one?

7 A. What was that?

8 Q. Which side window was opened? Do you mean the

9 one to the east?

10 A. The one by the door.

11 Q. Where did Bart live in this house?

12 A. He stayed on the couch out in the front room.

13 Q. You've testified that you came in and out of

14 that house however many times you did that day. Which door

15 did you go out of?

16 A. The back door.

17 Q. Always the back door?

18 A. Yeah.

19 Q. The pistol that has been identified as being the

20 Ruger pistol, where was that located?

21 A. It was on the kitchen table.

22 Q. The kitchen table is the circle on that diagram;

23 is that right?

24 A. Yes.

25 Q. And it was in this brown purse; is that right?

1           A.       Well, it was kind of in it, it wasn't in it. It  
2 looked like just the nose was in it, the end of the gun.

3           Q.       Where were you when you heard the second series  
4 of shots?

5           A.       In Tira's room.

6           Q.       How many shots did you hear that time?

7           A.       I don't know.

8           Q.       Do you have any approximation?

9           A.       No, I don't.

10          Q.       Did you have any problem hearing the shots?

11          A.       No.

12          Q.       They were clear to you, I take it?

13          A.       Yes, they were.

14          Q.       When you went out to the alley the first time,  
15 when Jamie was standing over your mother, the first thing  
16 you recall is that they both said something to the effect,  
17 "Get out of here," is that right?

18          A.       Yes.

19          Q.       And your mother was alive at that time, wasn't  
20 she?

21          A.       Yes.

22          Q.       And what did you say to them?

23          A.       I told, asked Jamie to leave and told him that I  
24 was going to call the cops if he didn't leave.

25          Q.       Did that seem to surprise him?

1           A.       What?

2           Q.       Did that seem to surprise him?

3           A.       No.

4           Q.       You said he was angry. What do you mean he was

5 angry?

6           A.       Well, when he told me to get out of there he

7 wasn't -- he just told me get out of there and told me that

8 he would take her to the doctor himself.

9           Q.       Were they -- was he shouting at you?

10          A.       He wasn't shouting, but he was loud.

11          Q.       Had he ever talk to you like that before?

12          A.       No.

13          Q.       Had he ever talk to you in an angry voice

14 before?

15          A.       Not that I can remember.

16          Q.       Why did you take the Ruger pistol out to the

17 barn?

18          A.       I don't know. It was reflexes, I guess,

19 instinct. I don't know.

20          Q.       What was going through your mind?

21          A.       That my mom was in trouble and she needed help.

22          Q.       And did you take the pistol for protection,

23 then?

24          A.       Maybe. I don't know.

25          Q.       Did you have any idea what you were going to

1 find when you walked out there?

2 A. No, I didn't.

3 Q. When was the last time before July 1st that you  
4 had seen Jamie?

5 A. It has been quite a while. Last time was, I'd  
6 seen him was -- I had seen him at the Butte Cafe inside the  
7 window. I didn't go inside.

8 Q. Do you have any recollection of when that was?

9 A. No, I don't.

10 Q. When your mother went out and made the phone  
11 call to her father and then came back into the house, did  
12 she come into your bedroom?

13 A. Yes, she did.

14 Q. You were still on the bed at that time?

15 A. Yes, I was.

16 Q. Then you went back, she went back outside. Did  
17 you see her walk across the yardway?

18 A. No, I didn't.

19 Q. From the time that you awoke that morning until,  
20 until the first time that you had gone out to the alley, the  
21 alleyway, did you leave your bedroom?

22 A. Did I leave my bedroom? Yes.

23 Q. Where did you go?

24 A. Into the kitchen to look at the stuff she had  
25 broughten (sic) us.

1 Q. That would be the magazine, some magazines, and  
2 a calendar?

3 A. Yeah.

4 Q. Is it your testimony that you believe your  
5 mother came home at 10:00 o'clock?

6 A. It was around there.

7 Q. Tiffnie, do you recall writing a statement for  
8 the police shortly after this incident happened?

9 A. Yes, I do.

10 Q. Was your memory clearer at that time than it  
11 was, than it is now?

12 A. Yes.

13 Q. Were things fresher in your memory?

14 A. Yes.

15 Q. Isn't it true in that statement that you said  
16 that your mother came home at ten minutes to 11:00?

17 A. I can't remember.

18 Q. Well, did you or did you not make a statement on  
19 our about July 1st, 1984, that mother came home at 11:00  
20 o'clock ten to 11:00?

21 A. I made a statement. I don't know, remember what  
22 time it was, though.

23 Q. Well, do you deny making that statement?

24 A. No, I don't.

25 Q. Why are you -- why would you make that statement

1 then and tell us that she came home at 10:00 o'clock today?

2 MR. HAWS: Your Honor, I object to that. I think  
3 that's a misstatement of what she said. Defense counsel's  
4 original question was: Was it 10:00 o'clock? She said  
5 around 10:00 o'clock. On direct exam she said 10:30. So I  
6 think it's incorrect to say that she said it was 10:00  
7 o'clock.

8 THE COURT: Counsel, my notes reflect that on direct  
9 examination she did say around 10:30.

10 MR. STOKER: Well, isn't this the function for the  
11 jury to decide here, your Honor?

12 MR. HAWS: Well, and I have no problem with that, as  
13 long as --

14 THE COURT: Well, my problem is if you are going to  
15 ask her questions, give her the proper testimony, Randy.  
16 I was very careful taking that down.

17 Objection sustained to that extent.

18 BY MR. STOKER:

19 Q. Did you testify this morning that your mother  
20 came home at 10:00 o'clock?

21 A. No, I don't think I did.

22 Q. What time did she come home?

23 A. I don't know. I didn't look at the clock.

24 Q. Well, how can you tell the jury what time she  
25 came home if you don't know?



1 A. I was guessing what time it was.  
2 Q. Why did you go back in the house to hide the .22  
3 Ruger?  
4 A. 'Cause I was scared.  
5 Q. What were you scared of?  
6 A. That he would take it away or something. I  
7 didn't know.  
8 Q. You had seen that Mr. Charboneau was standing  
9 over your mother with a rifle?  
10 A. Yes.  
11 Q. She was still alive?  
12 A. Yes.  
13 Q. Did you believe that he was going to leave?  
14 A. I didn't know.  
15 Q. What was going through your mind at that time?  
16 A. I can't remember now.  
17 Q. Why did -- why did you hide the keys to the  
18 pickup?  
19 A. So he wouldn't take her in the pickup away.  
20 Q. So weren't you afraid that he was going to in  
21 fact take her away?  
22 A. Yeah, but I didn't see any vehicle or anything  
23 around there.  
24 Q. Well, if you thought that he was going to take  
25 her away, I take it that troubles you?

1 A. Yes.

2 Q. Why did it trouble you?

3 A. 'Cause I didn't want her to leave, 'cause she  
4 was hurt.

5 Q. Did the thought go through your mind, Tiffnie,  
6 that if Mr. Charboneau was going to take her away, that you  
7 might have to stop him?

8 A. I might have to stop him? No, never went  
9 through my mind.

10 Q. After -- you've testified that you called the  
11 police?

12 A. Yes.

13 Q. Who did you call?

14 A. Jerome police station.

15 Q. And do you know who you talked to?

16 A. No, I don't.

17 Q. Did you call an ambulance?

18 A. I didn't. My little sister did.

19 Q. When Jamie told you to leave, you said that it  
20 was in a -- he was angry?

21 A. Yes.

22 Q. Do you know what he was angry about?

23 A. No, I don't.

24 Q. Was there anything in the conversation that took  
25 place that would indicate to you why he was angry?

1           A.       No.

2           Q.       How long a time transpired between the time you  
3 left the alleyway the first time and the second series of  
4 shots that you heard?

5           A.       I don't know.

6           Q.       Was it pretty quick?

7           A.       Enough time for me to get Tira out of the  
8 bathtub and start to get dressed. I don't know how long it  
9 was.

10          Q.       Didn't you -- let me see if I understand the  
11 scenario. That you went out to the alley, had the  
12 conversation, you went back into the house -- I'm sorry --  
13 you went and called the police?

14          A.       Yes.

15          Q.       And I take it that whatever time the police log  
16 might reflect that you called you wouldn't disagree with?

17          A.       No, I wouldn't disagree with.

18          Q.       You weren't looking at the clock?

19          A.       No.

20          Q.       And then you went into the house, you walked  
21 through the back door; is this right?

22          A.       Yes.

23          Q.       You walked into your bedroom; is that right?

24          A.       No.

25          Q.       Where did you go?